

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.) No. 4:13-CR-221-CDP
)
 DARYL WARREN,)
)
 Defendant.)

JURY TRIAL

VOLUME 2

BEFORE THE HONORABLE CATHERINE D. PERRY
UNITED STATES DISTRICT JUDGE

MARCH 5, 2014

APPEARANCES:

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INDEX*Witnesses:***RICHARD ZAYAS**

Cross-examination by Mr. Jimerson Page 8
 (cont'd from 3/4/2014)

Redirect Examination by Mr. Stevens Page 20

JASON TOWNSEND

Direct Examination by Mr. Stevens Page 32

Cross-examination by Mr. Jimerson Page 49

Redirect Examination by Mr. Stevens Page 54

JEFF ELEVELD

Direct Examination by Ms. Behrens Page 55

Motions Page 76

Jury Instruction Conference Page 78

Jury Instructions Page 126

Plaintiff's Closing Argument Page 141

Defendant's Closing Argument Page 157

Plaintiff's Rebuttal Closing Argument Page 174

Jury Instructions Page 179

Jury Notes Page 184

Verdict Page 189

1 (Proceedings began at 9:06 a.m.)

2 (The following proceedings were held in open court and
3 with the Defendant present.)

4 (The following proceedings were held outside the hearing
5 and presence of the Jury.)

6 THE COURT: Anything we need to discuss before we
7 begin with the Jury?

8 MR. JIMERSON: Yes, ma'am.

9 THE COURT: Okay. Why don't you stand at the --
10 please stand at the microphone.

11 MR. JIMERSON: Sure. Thank you, Your Honor. Your
12 Honor, Mr. Warren's brother, through his mother, delivered a
13 tape to me this morning.

14 THE COURT: A CD, yeah.

15 MR. JIMERSON: Yes, ma'am, a CD. It was listed as
16 Bates 117, and this is the tape that, according to Mr. Warren,
17 that contains information that -- that I didn't have on my --
18 on my 117s and the prior tapes, so I don't know. I have not
19 looked at it. I'm asking to play it before the Jury comes
20 out, of course, to play it in front of the Court to see if it
21 contains the information that Mr. Warren is asking.

22 THE COURT: Okay. Mr. Stevens, how long is this one?

23 MR. STEVENS: Judge, I have no idea. This wasn't one
24 we played, and I haven't looked at it in weeks. What this
25 is --

1 THE COURT: Okay. Is it five hours? Is it half an
2 hour? Can you give me an estimate?

3 MR. STEVENS: I think it will be the same length as
4 110, which we watched yesterday, the second one that we
5 watched yesterday.

6 THE COURT: Okay. So you do have an idea?

7 MR. STEVENS: Well, I haven't seen it in a long time,
8 Judge.

9 THE COURT: I understand. I just -- I need some help
10 here, okay?

11 MR. STEVENS: I understand. I understand, but what I
12 want to explain is 117 is the same material that we saw in
13 110, just from a different camera view. It's the same audio
14 that Agent Zayas had on, which we heard in 110.

15 THE COURT: Okay. Well, I need to see what's correct
16 since the Defendant thinks this is it, so would you please go
17 tell the Jury that it will be about a half an hour before we
18 start?

19 All right. Would you please play it for me?

20 You can step down, sir, until the time comes.

21 THE WITNESS: Yes, ma'am.

22 THE COURT: Tell them to come back in 30 minutes.

23 THE CLERK: Okay.

24 MR. STEVENS: Do you want to fast-forward to the
25 actual meeting, Judge?

1 THE COURT: Yeah, when the Defendants get there or
2 the Defendant.

3 (Video played.)

4 MR. JIMERSON: Your Honor -- stop it.

5 THE COURT: Well, why don't you keep playing it?

6 MR. JIMERSON: Okay. Go ahead.

7 MR. STEVENS: What you'll be hearing, Judge, is the
8 audio from Agent Zayas and Robert Washington together in the
9 truck again.

10 THE COURT: Yeah, I understand that. I just -- I
11 want to see.

12 (Video played.)

13 THE COURT: Okay. Thank you.

14 All right. Mr. Jimerson, anything we need to
15 discuss?

16 MR. JIMERSON: No, ma'am.

17 THE COURT: Okay. What else do we need to talk
18 about? We've got -- I told the Jury 30 minutes. I should
19 have told them 10, so anything else we need to discuss before
20 we get going? Okay. All right. So we'll -- just stay close.
21 I'll have the clerk check. Maybe the jurors will be back
22 sooner, and we'll start whenever they come back.

23 MR. JIMERSON: Yes, ma'am.

24 THE COURT: Okay.

25 MR. JIMERSON: Thank you.

1 (Court recessed from 9:19 a.m. until 9:36 a.m.)

2 (The following proceedings were held outside the hearing
3 and presence of the Jury.)

4 THE COURT: All right. Mr. Stevens.

5 MR. STEVENS: Thank you, Judge. If I could, I wanted
6 to just finish the record regarding the tape we watched this
7 morning, and, Mr. Jimerson, if I say anything incorrect, you
8 can correct me, but my understanding is that the Defendant's
9 brother arrived with a CD this morning, Bates #117, which
10 would have been disclosed by the Government, I believe, last
11 June, and that it was the Defendant's position that that was
12 the CD that would contain some -- quote, unquote -- missing
13 video that was not on the Bates #110 or in the Government's
14 exhibits that were played at trial and that we in court here,
15 outside of the hearing of the Jury, watched Bates #117 and
16 that there was no -- quote, unquote -- missing video and that
17 it essentially was the same as 110 but for the fact that it
18 was from a different camera angle.

19 THE COURT: Well, you know, I'll agree that it was --
20 it looked essentially the same to me as 110 and was from a
21 different camera angle, but I'm not making any findings about
22 what's missing or what's not missing. You'd have to go
23 frame-by-frame, and I don't think that's necessary. I am
24 curious why Mr. Jimerson didn't have it. You produced it to
25 the other defense lawyer?

1 MR. STEVENS: Well, yeah, I produced it months ago,
2 Judge, and I don't know if --

3 THE COURT: Do you know why you didn't have it,
4 Mr. Jimerson?

5 MR. JIMERSON: No, no, Your Honor. In fact, let me
6 state this. I think I had 117. Now, the missing portion that
7 Mr. Warren was speaking about, I didn't have it, so I had 117,
8 but that's not what I think Mr. Warren was speaking of, so --

9 THE COURT: Okay. Okay. All right. That's fine,
10 and I -- yeah, it was -- I believe it looked like the same to
11 me from another camera angle, and obviously, the video was
12 different, but they were saying -- I mean the audio was
13 different, but they were saying the same things. It was
14 staticky and from a --

15 MR. STEVENS: Different quality, yes.

16 THE COURT: Different quality, yeah. Okay.

17 MR. STEVENS: On another note, Judge, we just wanted
18 to make sure that you got the amended jury instructions.

19 THE COURT: Yeah. I haven't had time to look at
20 them, but I did see they came in. Okay. We'll bring in the
21 Jury, and you can continue the cross-examination.

22 MR. JIMERSON: Thank you, Your Honor.

23 (The following proceedings were held within the hearing
24 and presence of the Jury.)

25 THE COURT: Members of the Jury, I apologize for the

1 delay. There was an evidentiary issue we had to resolve. So
2 we are ready to continue with the cross-examination, and you
3 may proceed.

4 MR. JIMERSON: Thank you, Your Honor.

5 **RICHARD ZAYAS,**

6 HAVING BEEN PREVIOUSLY DULY SWORN, WAS EXAMINED AND TESTIFIED
7 AS FOLLOWS:

8 CROSS-EXAMINATION

9 (continued from 3/4/2014)

10 BY MR. JIMERSON:

11 Q Good morning, again, Special Agent Zayas.

12 A Good morning, sir.

13 Q Good morning. Sir, we were last talking about, I guess,
14 your conversations with Mr. Warren and whether he told you he
15 didn't want to participate. Do you recall the last meeting?
16 We were talking about that.

17 A Yes, sir.

18 Q Okay. All right. Let me go back a little bit now. You
19 also had a conversation with Daryl -- I mean Michael Twitty
20 and Roberto -- Robert Washington, is that correct, sir?

21 A Yes, sir.

22 Q Okay. Now, isn't it true that you were asked by -- by
23 one of those people, particularly, Twitty or Washington,
24 that --

25 MR. STEVENS: Judge, I'm sorry. If I could, I would

1 object. I think this is hearsay.

2 THE COURT: Overruled.

3 Q (By Mr. Jimerson) You were asked by those two people or
4 one of those persons that -- that -- whether you were a police
5 officer, isn't that correct?

6 A Yes, sir, by Twitty.

7 Q Okay. And -- and you told him, if I can quote this, you
8 said, "Fuck, no, bro. We'll do -- we'll do what you want to
9 pick up that car while we're waiting. I can show you how to
10 work the trap and all that shit." That's what you said, is
11 that correct?

12 A Yes, sir, with a pause. I think there's a pause in
13 there.

14 Q Okay. I -- okay, but, basically, you were asked that,
15 and you lied to them about whether or not you were in fact a
16 police officer, is that correct, sir?

17 A That is correct.

18 Q And isn't that essential when someone wants to withdraw,
19 they're asking you whether you're a police officer, and you
20 lied to them?

21 A No. That's when they don't want to get caught.

22 Q That's your belief, is that correct?

23 A No, sir, that's a fact. They don't want to get caught.

24 Q If you had told this man that you were a police officer
25 when he's asking about that, then, basically, you know, he

1 wouldn't participate, is that correct?

2 A Precisely. He doesn't want to get caught.

3 Q All right. But that's precisely you're trying to entrap
4 him, is that correct, sir, by telling him you're not a police
5 officer?

6 A No, sir. I'm trying to continue the case while assuming
7 my identity.

8 Q Well, you're saying one thing, he doesn't want to get
9 caught, but I'm just asking you, just the opposite, logically,
10 you know, if -- if -- if -- whether he's -- it's entrapping
11 him by saying he's not a police officer when he asked you?

12 A Absolutely not. It's his free will to do whatever he's
13 doing.

14 Q Okay. Just like, in fact, when he told you -- he,
15 Mr. Warren, saying he's feeling bad vibes about this; do you
16 recall that, sir?

17 A I recall him saying that. I don't remember what context
18 he said that.

19 Q Okay. Okay. Well, I'll read you again. You were
20 talking about -- and this is from the transcript on the 5th, I
21 believe. It said, "What's his vibe? He's going to come or
22 no? It's just not a good vibe, man, I mean," and basically,
23 he said that, Mr. Warren, is that correct?

24 A Again, I don't understand the context. I'd have to read
25 what's before it and after it in order to understand what the

1 context is.

2 Q Let me read to you what I believe you said after that.

3 You said, "You don't think he's going to come over here?"

4 A Again, I would need to read the transcript, several
5 pages, several questions above it and several questions below
6 it, so I could understand the context.

7 Q Yeah, but, Special Agent, this is your case. This is
8 what you put together. You're telling me now that basically
9 I'm reading you a conversation that you had and you don't
10 understand the context of what I'm reading to you?

11 A I'd have to look at the transcript. If I could see the
12 transcript, I could tell you the context of what was said.

13 MR. JIMERSON: Okay. Your Honor, may I approach the
14 witness and provide his transcript to him?

15 THE COURT: You may.

16 MR. JIMERSON: Thank you.

17 THE WITNESS: Thank you.

18 MR. JIMERSON: Read it and I'll take it back.

19 THE WITNESS: Okay.

20 MR. JIMERSON: Hold that page for me, though.

21 THE WITNESS: You got it.

22 MR. STEVENS: Can you tell me the page?

23 MR. JIMERSON: I don't know it. Actually, Special
24 Agent, what page are you looking at -- the one I had kind of
25 marked for you?

1 THE WITNESS: Page 5.

2 MR. JIMERSON: Thank you.

3 THE WITNESS: Okay. I understand the context.

4 MR. JIMERSON: Okay. All right. May I approach
5 again, Your Honor, to retrieve it?

6 THE COURT: You may.

7 THE WITNESS: Here you go, sir.

8 MR. JIMERSON: Thank you.

9 THE WITNESS: Yes, sir.

10 Q (By Mr. Jimerson) So isn't it true -- my question was,
11 isn't it true that Mr. Warren said he -- that he's not --
12 there's -- "It's just not a good vibe, man"; isn't it true he
13 said that?

14 A Right. He's talking about the unknown person, the
15 unknown person's vibe, not his vibe, the unknown person's
16 vibe.

17 Q That's your belief, right?

18 A No. That's what it says in the transcript.

19 Q In fact, isn't it true, sir, that, basically, he's saying
20 there's not a good feeling about what's going on here, sir?

21 A No. He's talking about the fourth person. If you read
22 before it and you read the context in which it's said, he's
23 speaking about the other individual, the unknown.

24 Q Okay. Now, in fact, Mr. Warren, even later on in that
25 conversation, you know, said he wasn't -- he wasn't going,

1 isn't that correct, sir?

2 A He wasn't going to get the car?

3 Q Yes.

4 A At a point, he wanted to stay there and not go get the
5 car.

6 Q Now, staying there is not following you, is that correct?

7 A Correct.

8 Q Okay. Staying there is simply -- now, in your job as
9 a -- as to entrap these -- well, your job is to get these
10 people to come follow you because you want to do what, sir?

11 A No.

12 MR. STEVENS: I'm going to -- yeah, I'm going to
13 object to the premise of the question. It's argumentative.
14 He's asking --

15 THE COURT: Yeah, sustained. Rephrase your question.

16 MR. JIMERSON: Thank you, Your Honor.

17 Q (By Mr. Jimerson) You wanted to keep everybody with you,
18 is that correct, sir?

19 A Yes, sir.

20 Q That's the basis of your getting them to commit this
21 crime, as you speak, is by keeping people together?

22 A No, sir. Just it gives me an opportunity to be able to
23 speak to other unknowns if they haven't been there yet. He
24 had already heard this twice before.

25 Q Well, well, but that still doesn't mean he complied with

1 you, he was complicit with you in doing what you was doing,
2 but my question to you -- I'm sorry. My question to you,
3 sir -- he has stated he wanted to stay and not go with you,
4 isn't that correct?

5 A He wanted -- initially, he wanted to stay at the car
6 wash, yes, sir.

7 Q And not go with you?

8 A Not go with me to retrieve the car. He was going to send
9 Washington to retrieve the car, and then we were going to come
10 back.

11 Q All right. I'm trying to ask you a direct question, and
12 basically, he said he didn't want to go with you, is that
13 correct?

14 A Yes, sir.

15 MR. JIMERSON: All right. If you can play -- is it
16 6-4?

17 MR. STEVENS: J4-2?

18 MR. JIMERSON: J4-2, please.

19 (Video played.)

20 Q (By Mr. Jimerson) Now, there was some hesitation in
21 Mr. Warren speaking to you about that, is that correct, sir?

22 A About his associates, not about him.

23 Q Okay. That's your belief, is that correct?

24 A No. That's what he said.

25 Q That's your belief?

1 A No. That's what he said.

2 Q Okay. You don't think that, basically, Mr. Warren is
3 telling you about -- you knew at this time Mr. Warren didn't
4 have any associates, is that correct, sir?

5 A He did have an associate. He had Washington and Twitty.

6 Q This other car, this other car that was supposedly going
7 to follow him or something, you knew that was not correct?

8 A No. This is June the 4th.

9 Q Okay.

10 A The issue about the other car is June the 5th.

11 Q Okay. But you knew -- well, let's go to June 5th. You
12 knew that -- basically, that -- that there was no other car,
13 isn't that correct?

14 A No.

15 Q Sir, you are a trained Special Agent; you have a number
16 of years of experience, is that correct, sir?

17 A Yes, sir.

18 Q And are you saying that, basically, you don't investigate
19 the background information to see whether that's true or not
20 for safety reasons?

21 A It's -- again, it's his free will to bring whomever he
22 pleases, so he could have brought Washington and Twitty. He
23 could have brought five other individuals. That's not my
24 choice. That's his choice.

25 MR. JIMERSON: Okay. And, Mr. Stevens, could you

1 play the remaining one, the -- I think the three-minute clip,
2 please?

3 MR. STEVENS: The disc you wanted?

4 MR. JIMERSON: Yes, sir, that three-minute clip. I
5 don't know what -- what exhibit is it for the Court?

6 MR. STEVENS: That's from Government's Exhibit 7.

7 MR. JIMERSON: Exhibit 7. It's the three-minute
8 missing exhibit.

9 THE COURT: Government's Exhibit 7. Okay.

10 MR. STEVENS: Judge, I'm going to object. He
11 referred to it as missing.

12 THE COURT: Yeah, I don't know that anything's
13 missing, but, yeah, let's go ahead and play Government's
14 Exhibit 7. It's been received into evidence and, I think, was
15 played yesterday, correct?

16 MR. JIMERSON: No, ma'am, not that portion of it.

17 THE COURT: Not that portion of it. Okay. That's
18 fine.

19 (Video played.)

20 MR. JIMERSON: Let's stop it right there, please.

21 THE COURT: Can you stop it?

22 MR. JIMERSON: Stop it right there.

23 Q (By Mr. Jimerson) You heard the statement, "My people
24 have tools. They've got to come." Did you hear that, sir?

25 A Yes, sir.

1 Q Okay. And that's referring to guns, is that correct,
2 sir?

3 A Yes, sir.

4 Q Okay. So, at this point, Mr. Warren is telling you he
5 doesn't have any guns, is that correct, sir?

6 A That's correct.

7 Q Okay. All right. And you're expecting there to be guns
8 in order to go do this, is that correct, sir? Let me rephrase
9 that. Why would Mr. Washington be telling you he doesn't have
10 guns to go do the crime that you're talking about, sir?

11 A You'd have to ask him.

12 Q Well, I'm asking you. Why -- you know --

13 A I don't know. You'd have to ask him. He's the one
14 that's going to commit the robbery, not me.

15 Q Isn't that -- well, you're there saying you're a Mexican
16 cartel participant. Now, my question -- so as a liar you
17 would know --

18 MR. STEVENS: Your Honor, I'm going to object.

19 MR. JIMERSON: I'll rephrase it.

20 THE COURT: Okay. Please, please rephrase the
21 question.

22 Q (By Mr. Jimerson) And I'm sorry. That was improper. As
23 a person and as you're making this story up and telling -- you
24 know, you're saying I've got to ask him. Isn't -- wouldn't
25 you know, Special Agent Zayas, that, basically, that someone

1 that's going to commit a crime like that would have to have
2 some guns ready to go or committed to go?

3 A Again, it's his decision. If he wants to go in there
4 with a knife or if he wants to go in there with a saw, that's
5 his decision as to how he's going to commit the robbery. I'm
6 not telling him how to do it, what to bring, or who to bring.

7 Q But isn't that an indication that he's withdrawing from
8 doing this, sir?

9 A Absolutely not. I asked him --

10 Q If --

11 A If I may finish, sir.

12 Q All right.

13 A If I may finish.

14 THE COURT: Wait. One question at a time. You asked
15 him a question. It was a question. Let him answer it.

16 A I asked him, "Are you guys ready to go from here?" And
17 they said, "Yes." Both he and Twitty answered, "Yes," so they
18 were ready to commit the robbery from that location.

19 Q (By Mr. Jimerson) But they told you they didn't have any
20 weapons, is that correct?

21 A No. They said the individual was close by who would be
22 meeting them to go do the robbery is what they said.

23 Q Well, I'm asking you. They said they didn't have any
24 weapons, isn't that correct, sir?

25 A Yes, sir.

1 Q Okay. And -- and that is an indication that they're
2 withdrawing, isn't that correct, sir?

3 A No, absolutely not. I asked them, "Are you guys ready to
4 go from here?" And they said, "Yes," so they were prepared to
5 commit the robbery.

6 MR. JIMERSON: Okay. We can continue, please, the
7 tape.

8 (Video played.)

9 MR. JIMERSON: Okay. Thank you.

10 Q (By Mr. Jimerson) Now, at the end of that conversation,
11 is that the one where you're going to the trap car?

12 A Yes, sir. What we do is we depart from that location,
13 the car wash, over to the arrest location.

14 Q Okay. And Mr. Washington told you he wasn't going to go,
15 is that correct, sir? I'm sorry.

16 A No.

17 Q That was the day before he said he wasn't going to go, is
18 that correct?

19 A No, sir.

20 Q Some day he said he wasn't going to go to the car, is
21 that correct, sir?

22 A No. Washington?

23 Q No, no. Warren. I'm sorry.

24 A No. On the 5th there, I told them, I said, "If you guys
25 want to stay here, you can stay here, and I'll go get the

1 car," and that's when I asked them, "Are you ready to go?"

2 And they said, "Yes."

3 Q Okay. Mr. Warren told you one of those days that he
4 wasn't going, he was going to stay there, is that correct?

5 A They had -- that was on the 5th they were thinking about
6 staying there, correct.

7 Q That's what I'm asking you.

8 A Well, you're confusing me because you're not saying the
9 days.

10 Q And I'm not trying to. I'm just trying to get out the
11 fact that you understood that one of those days, the 5th, he
12 said he wasn't going, is that correct?

13 A They were contemplating staying there, yes, sir.

14 MR. JIMERSON: Okay. All right. May I have one
15 minute, Your Honor?

16 THE COURT: You may.

17 MR. JIMERSON: Thank you, Your Honor. I have no
18 further questions.

19 THE COURT: Any redirect?

20 MR. STEVENS: Thank you, Judge. Leave that
21 transcript there, Mr. Jimerson.

22 MR. JIMERSON: Sure.

23 REDIRECT EXAMINATION

24 BY MR. STEVENS:

25 Q Agent Zayas, let me hand you back that transcript that

1 Mr. Jimerson showed you, and I want to talk a little bit more
2 about that. That's page 5 of the transcript of June 5th of
3 2013.

4 A Yes, sir.

5 Q All right. And starting at the top there, you asked
6 Mr. Warren, "Hey, what's his vibe," is that right?

7 A I can't -- I don't recall if it was Warren I was speaking
8 to or Twitty, but they were both standing next to each other.

9 Q Okay. And they were both there?

10 A Correct.

11 Q And when you say, "Hey, what's his vibe," what were you
12 referring to in the context of the conversation? Who were you
13 referring to?

14 A I'm talking to that unknown individual as to what's his
15 vibe about coming to meet with me.

16 Q Okay. And you asked, "What's his vibe? Is he going to
17 come or no?" And Mr. Warren says, "It's just not a good
18 vibe," and you ask, "You don't think he's going to come over
19 here?" And he says, "I doubt it, dog. He ain't going to
20 come," right?

21 A Correct.

22 Q Okay. Now, shortly after this, you had the conversation
23 in which Mr. Warren says that if they're going to -- if
24 something happens and they're going to take a fall, then he
25 doesn't want his people there for it. Do you recall that

1 conversation?

2 A Yes, sir.

3 Q We played that yesterday?

4 A Yes, sir.

5 Q And Mr. Twitty says, "Yes, it will be just -- it's just
6 us." Do you recall that?

7 A That's correct.

8 Q And, basically, referring to if -- if they're going to
9 take a fall, it's just going to be them, not whoever else
10 might be out there?

11 A That's correct.

12 Q All right. And, again, this is the same day, June 5th,
13 you referred to. You asked Mr. Warren and Mr. Twitty if
14 they're ready to go?

15 A That is correct.

16 Q Right here and right now?

17 A Correct.

18 Q And what was their response?

19 A That they were prepared to go commit the robbery.

20 Q All right. Going back to the first clip Mr. Jimerson --
21 well, before I get to that, let's finish with this. On
22 that -- also on June 5th, the clip that was just played,
23 Mr. Warren refers to the tools, the ammunition, and the heat
24 being in another vehicle, is that right?

25 A Yes, sir.

1 Q And would you say it's fair that that indicates he's
2 aware that there are guns involved in this conspiracy?

3 MR. JIMERSON: I would object to the conclusion, Your
4 Honor.

5 THE COURT: Yeah. Sustained.

6 MR. STEVENS: All right. But he indicates --

7 THE COURT: It's argument and you don't need to make
8 it from the jury or the witness stand.

9 MR. STEVENS: I understand, Judge.

10 Q (By Mr. Stevens) He indicates to you that there's heat,
11 tools, and ammunition, is that right?

12 A That's correct.

13 Q He indicates that it's in a different car, correct?

14 A Yes, sir.

15 Q All right. He never told you, "I don't have heat or
16 ammunition or tools," did he?

17 A No, he did not.

18 Q But he said that they were in another car?

19 A That is correct.

20 Q All right. And, in fact -- and, of course, this is on
21 the same day he's arrested, correct?

22 A Correct.

23 Q And his car searched?

24 A Correct.

25 Q Mr. Jimerson asked you about Mr. Warren indicating that

1 they wanted to stay at the -- that they didn't want to go;
2 that's the way he asked you; do you recall that?

3 A Yes, sir.

4 Q And, actually, Mr. Warren indicated, didn't he, that he
5 didn't want to go to the car wash, is that right?

6 A No. He --

7 Q I'm sorry. He didn't want to leave from the car wash to
8 the arrest location?

9 A Correct.

10 Q He indicated that briefly?

11 A Correct.

12 Q All right. What did he want to do instead? Did you have
13 a conversation about that?

14 A What he wanted to do was he wanted me to take Washington
15 to the car and then to bring that car back to the car wash.

16 Q Okay. So he wanted you to come back for him at the car
17 wash?

18 A Correct.

19 Q All right. Ultimately, did he end up following you to
20 the arrest location?

21 A Yes, he did.

22 Q And was that after you told him -- and we saw it on the
23 clip -- "It's up to you guys, whatever you want to do"?

24 A That's correct.

25 Q You told him that?

1 A Correct.

2 Q And what choice did he make?

3 A He decided to follow me.

4 Q In this clip we just watched from Exhibit 7, Mr. Warren
5 says, "We are coming in." Do you recall that?

6 A Yes, sir.

7 Q And referring to -- you asked him, "How many guys are
8 going in?" Do you recall that?

9 A Yes, sir.

10 Q What was his response?

11 A He responded that they were going in, he and Twitty, and
12 that Washington was not going to be entering the residence or
13 the stash house.

14 Q Right. Okay. So he said that he and Mr. Twitty were
15 going in?

16 A Correct.

17 Q And, again, this is the same conversation there on the
18 car wash lot?

19 A Correct.

20 Q And then he indicated Mr. Washington would not be going
21 in?

22 A Correct.

23 Q Do you recall him in that clip turning to Mr. Washington
24 and saying, "You don't need to go in; you don't have one of
25 those things"?

1 A Correct.

2 Q Do you recall that?

3 A Yes, sir.

4 Q He says, "You ain't got no thing; you ain't coming in" to
5 Mr. Washington, is that right?

6 A That's correct.

7 Q He's telling Mr. Washington what his role is that day?

8 A Yes, sir.

9 Q And he's told you what his role and Mr. Twitty's roles
10 are?

11 A Yes, sir.

12 Q I want to go now to that day or any other day during the
13 course of this conversation, did Mr. Warren ever tell you that
14 he did not want to do this robbery?

15 A He never said that.

16 Q And if I understand correctly, all of your interaction
17 with Mr. Warren in the course of this case is on videotape?

18 A That's correct.

19 Q Referring to another videotape, Mr. Jimerson replayed
20 what the Government played yesterday from Government's Exhibit
21 6. You have a conversation with Mr. Warren on June 4 of 2013;
22 do you recall that?

23 A Yes, sir.

24 Q That was in the 2800 block of Iowa?

25 A That's correct.

1 Q And you and Mr. Warren and Mr. Washington were present
2 there?

3 A Yes, sir.

4 Q And that's the -- we saw the clip. That's the date on
5 which Mr. Warren indicated that his people were skeptical
6 about going in there blind; do you recall that?

7 A Yes, sir.

8 Q And he asked you about how many people were in the house?

9 A Correct.

10 Q All right. Did he express that -- that he was skeptical?

11 A No, sir.

12 Q Did he express that he was skeptical about doing this
13 robbery at all?

14 A No, sir.

15 Q Instead he expressed his people were skeptical about the
16 number of people in the house, is that right?

17 A Correct.

18 Q Shortly after that, you asked him what he thought of
19 this, is that right? You asked, "What do you think?"

20 A Yes, sir.

21 Q And his response was, "I think it's pretty good. It's
22 going to be a shootout, though"?

23 A Correct.

24 Q Do you make it a practice to tell people, subjects of
25 your investigations when you're undercover, that you're a

1 police officer?

2 MR. JIMERSON: Your Honor, I object. This is
3 improper bolstering at this point.

4 THE COURT: Overruled.

5 A Absolutely not.

6 Q (By Mr. Stevens) Why not?

7 A Obviously, at that point, they're not going to commit a
8 crime, so it's pretty obvious that I'm not going to tell them
9 I'm a police officer.

10 Q Would you be concerned about your own safety in the
11 course of an undercover investigation?

12 A Yes, sir.

13 Q I want to go back to yesterday. Mr. Jimerson asked you
14 some things about the informants to -- to start his
15 cross-examination. Did the informants in this case have any
16 real interaction at all with Mr. Warren?

17 A No, sir.

18 Q Okay. It's my understanding that you testified yesterday
19 they purchased cocaine from Mr. Washington on May 21st.

20 A That is correct.

21 Q After that, you were introduced to Mr. Washington?

22 A That's correct.

23 Q And what happened to their role versus your role at that
24 time?

25 A It was diminished. At that point, I took over as the

1 lead on this, on this case.

2 Q All right. And these informants really didn't have much
3 of anything to do with Mr. Warren?

4 A That is correct.

5 Q On that note, you then purchased cocaine from
6 Mr. Washington on May 23rd of 2013?

7 A That's correct.

8 Q And at some point after that, you've already testified,
9 the focus of this investigation changed, is that right? Sort
10 of the investigation expanded, is that fair?

11 A It was another branch of the investigation, yes, sir.

12 Q Mr. Jimerson asked you yesterday whether it was someone
13 at ATF or someone up in Washington, DC or whatever that
14 decided to expand this investigation. Do you remember that
15 line of questioning?

16 A Yes, sir.

17 Q Will you tell this Jury, who was it that expanded the
18 investigation in this case?

19 A That was me.

20 Q All right. And was that in the course of a conversation
21 with Robert Washington?

22 A Yes, sir.

23 Q And why was it that the investigation expanded?

24 A I was trying to determine if -- if he was involved in
25 this type of crime or if he knew individuals that were

1 involved in this type of crime.

2 Q And did he tell you he knew individuals who could do this
3 kind of home invasion robbery?

4 MR. JIMERSON: Objection. Hearsay.

5 THE COURT: Overruled.

6 A Yes, sir.

7 Q (By Mr. Stevens) All right. Shortly after that, did he
8 introduce you to the Defendant?

9 A That's correct.

10 Q Mr. Jimerson yesterday asked whether you were sure that
11 the Defendant understood you when you were asking him things
12 like, "Do you feel me? Are we square? Are we good?" Do you
13 recall that?

14 A Yes, sir.

15 Q Are you confident that he understood you when you asked
16 him, "What do you think about this?"

17 A Extremely.

18 Q And when he responded, "It's going to be a shootout"?

19 A That is correct; he understood me.

20 Q Did he seem to understand you when you asked him, "Are
21 you ready to go right here and right now?"

22 A Yes, sir.

23 Q And what was his response?

24 A That he was.

25 Q When you -- did he -- did he seem to understand you when

1 you said that you were concerned that someone might shoot you
2 in the head in the course of this, of this robbery?

3 A He did not seem concerned.

4 Q And he seemed to understand what you were saying?

5 A Absolutely.

6 Q Did either he or Mr. Washington or Mr. Twitty suggest
7 that they don't know how you would have gotten shot or that
8 there weren't guns involved?

9 MR. JIMERSON: Your Honor, objection. This is beyond
10 the --

11 THE COURT: Sustained. It's argumentative.

12 MR. STEVENS: All right. I'll move on.

13 Q (By Mr. Stevens) Mr. Jimerson asked you whether this lick
14 that Mr. Washington was referring to could have been a Tootsie
15 Roll pop; do you recall that?

16 A Yes, sir.

17 Q Had you been talking to Mr. Washington for approximately
18 10 days at this point now about Tootsie Rolls?

19 A No, sir.

20 Q What had you been talking to him about?

21 A About a robbery.

22 Q You'd been talking to Mr. Warren about that as well?

23 A Correct.

24 Q Just to be clear, Mr. Warren never told you that he did
25 not want to do a robbery?

1 A That is correct.

2 Q And every conversation you had with him is on video, is
3 that right?

4 A Yes, sir.

5 Q He instead showed up for three meetings with you?

6 A Yes, sir.

7 Q Did you bring him to those meetings?

8 A No, sir.

9 MR. STEVENS: Thank you.

10 Nothing further, Your Honor.

11 THE COURT: You may step down.

12 THE WITNESS: Yes, ma'am.

13 THE COURT: You may call your next witness.

14 MR. STEVENS: Thank you, Judge. The Government calls
15 Special Agent Jason Townsend, please.

16 THE COURT: Mr. Townsend, would you come right over
17 here to the clerk to be sworn, please?

18 **JASON TOWNSEND,**

19 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
20 FOLLOWS:

21 DIRECT EXAMINATION

22 BY MR. STEVENS:

23 Q Will you state your name again, please, for the Jury?

24 A Jason Townsend.

25 Q And what is your occupation, sir?

1 A I'm a Special Agent with the Bureau of Alcohol, Tobacco,
2 Firearms and Explosives.

3 Q Commonly known as ATF?

4 A Yes, sir.

5 Q How long have you been an ATF agent?

6 A Twelve years.

7 Q Were you involved in an ATF undercover operation on
8 June 5 of 2013?

9 A Yes.

10 Q What was your role on that day?

11 A I was the evidence custodian.

12 Q All right. Would that -- would your responsibilities
13 then have included seizing evidence from a blue 2000 Cadillac?

14 A Yes.

15 Q I show you what's previously been admitted into evidence
16 as Government's Exhibit 11. Do you recognize that?

17 A I do. That's the blue Cadillac.

18 Q All right. And that has license number DH7F2Z; do you
19 see that?

20 A That's correct.

21 Q Showing you what's previously been admitted as
22 Government's Exhibit 8, can you identify on Government's
23 Exhibit 8 the location of the Cadillac at the time that you
24 seized evidence from it?

25 A It would be the far left red dot that's identified as

1 "Arrest Location, June 5."

2 Q All right. That would be indicated here?

3 A Yes.

4 Q Thank you. That location is in the city of St. Louis?

5 A Yes.

6 Q You're aware that's within the Eastern District of
7 Missouri?

8 A Yes.

9 Q And did you seize evidence from the interior of the
10 passenger compartment of that blue Cadillac?

11 A Yes, sir.

12 MR. JIMERSON: Mr. Stevens, can you show me that?

13 MR. STEVENS: Sure, absolutely.

14 May I approach the witness, Judge?

15 THE COURT: You may.

16 MR. STEVENS: Thank you.

17 Q (By Mr. Stevens) Agent Townsend, I want to show you what
18 have been marked as Government's Exhibits 16, 17, 21, 23, 24,
19 and 27. I'll also show you at this time Government's Exhibits
20 30 and 32. Do you recognize those photographs?

21 A I do. These are all the photographs that were taken at
22 the scene as I was collecting the evidence.

23 Q All right. And are these fair and accurate depictions of
24 the contents of the blue Cadillac on June 5th of 2013?

25 A Yes, sir.

1 MR. STEVENS: Your Honor, I would offer those
2 exhibits into evidence.

3 THE COURT: Any objection?

4 MR. JIMERSON: No objection, Your Honor.

5 THE COURT: All right. Then Exhibits 16, 17, 21, 23,
6 24, 27, 30, and 32 are all received into evidence.

7 MR. STEVENS: Thank you, Your Honor.

8 Q (By Mr. Stevens) All right. Agent Townsend, I'm going to
9 show you what's marked as Government's Exhibit 16. What is
10 that?

11 A That's a photo of the red bandana, the two knives, and
12 the two pairs of gloves that were seized from the front end of
13 the center console in the blue Cadillac.

14 Q All right. When they were found there and you seized
15 them, were they in plain view as they appear here?

16 A Exactly as they appear there.

17 Q All right. They weren't enclosed in a console or
18 anything; they were out in the open?

19 A That's correct.

20 Q All right. And I'm indicating here; is that the red
21 bandana you're referring to?

22 A It is.

23 Q And below that, are those the knives?

24 A That is. That's the two knives.

25 Q And what's -- what's below the knives there?

1 A Those are the pairs of gloves. There's two pairs of
2 gloves. It's hard to distinguish them in this particular
3 photo, but there are two pairs of gloves there.

4 Q Okay. Two pairs of work gloves?

5 A Yes.

6 Q Is it fair to say you did not find a shovel anywhere in
7 the car?

8 A I did not, no.

9 Q Thank you.

10 MR. JIMERSON: I'm sorry. What was the question?
11 I'm sorry.

12 MR. STEVENS: Whether he found a shovel in the car.
13 The answer was, "No."

14 MR. JIMERSON: Okay. Thank you.

15 Q (By Mr. Stevens) Government's Exhibit 17, what does this
16 show us, Agent Townsend?

17 A This is the -- a photo of all the items that were just in
18 the previous photo, except now they're displayed on the hood
19 of the vehicle.

20 Q All right. And that you placed them there for display
21 purposes so that the photographs could be taken?

22 A That's correct.

23 Q I show you next what I've marked as Government's Exhibits
24 18, 19, and 20 and ask if you can identify Government's
25 Exhibit 18, please.

1 A This is the evidence bag containing the two knives that
2 were collected from inside the vehicle.

3 Q And Government's Exhibit 19?

4 A This is the bag containing the red bandana that was
5 seized from the vehicle.

6 Q And Government's Exhibit 20?

7 A These are the two sets of gloves that were seized from
8 the vehicle.

9 Q All right. And you seized all of this evidence?

10 A I did, yes.

11 MR. STEVENS: Your Honor, I offer Government's
12 Exhibits 18, 19, and 20, please.

13 MR. JIMERSON: No objection, Your Honor.

14 THE COURT: All right. 18, 19, and 20 are received
15 into evidence.

16 MR. STEVENS: Thank you.

17 Q (By Mr. Stevens) Agent Townsend, that's Government's
18 Exhibit 18. Those are the two knives you seized from plain
19 view in the passenger compartment of the 2000 blue Cadillac?

20 A Yes, sir.

21 Q Next, I'll show you what you've previously identified and
22 has been admitted as Government's Exhibit 21. What is that a
23 photograph of?

24 A This is a photograph of the customer invoice from some
25 vehicle repair that was done to the blue Cadillac.

1 Q Where was that found?

2 A This was found, I believe, in the center console of the
3 vehicle.

4 Q All right. And I'll show you Government's Exhibit 22.
5 Is this the actual invoice that's depicted in that photograph?

6 A Yes, sir, it is.

7 Q Thank you. Is this what you seized on June 5th of 2013
8 from the blue Cadillac?

9 A Yes.

10 MR. STEVENS: Your Honor, I offer Government's
11 Exhibit 22.

12 MR. JIMERSON: No objection.

13 THE COURT: Exhibit 22 is received.

14 MR. STEVENS: Thank you, Judge.

15 Q (By Mr. Stevens) At the top here, does this document
16 indicate the owner of the blue Cadillac?

17 A Yes, it does.

18 Q And --

19 A It identifies Mr. Warren as the owner.

20 Q Daryl Warren?

21 A Yes.

22 MR. JIMERSON: I'm going to object, Judge. That's --
23 it indicates that his name is on the tag. He's saying it
24 identifies ownership, and I'm saying that's not true
25 necessarily.

1 THE COURT: You can cross-examine him on that.

2 Q (By Mr. Stevens) Yeah. Agent Townsend, this indicates
3 it's a customer invoice, right?

4 A It does, yes.

5 Q And it indicates the customer would be Daryl Warren?

6 A It indicates that he's the responsible party, yes.

7 Q All right. And does this describe the vehicle?

8 A Yes, it does.

9 Q And how does it describe the vehicle?

10 A As the 2000 -- year 2000 Cadillac Deville, which is the
11 same year and model as we searched.

12 Q All right. The same year and model as the car you
13 actually found this in?

14 A Yes.

15 Q Does it also indicate a license number for the vehicle?

16 A Yes, sir, and that license number is the same as depicted
17 on the vehicle.

18 Q All right. DH7F2Z?

19 A Yes.

20 Q Missouri?

21 A Yes.

22 Q On Government's Exhibit 11, is that a Missouri tag?

23 A It is, sir.

24 Q DH7F2Z?

25 A Yes, sir.

1 Q This also indicates the date of service, is that right?

2 A Yes, sir.

3 Q And what date was that?

4 A May 28th, 2013, which is approximately a week or so
5 before this item was seized from the vehicle.

6 Q I'll show you now Government's Exhibit 23, already
7 admitted into evidence. Does this depict more evidence that
8 was found inside the interior of the Cadillac?

9 A Yes, sir. This is a photo of Mr. Warren's driver's
10 license as it was positioned inside the visor of the driver's
11 side visor.

12 Q Government's Exhibit 24, already admitted into evidence,
13 what does this show us?

14 A This is another driver's license of Mr. Warren that was
15 found under the seat of the vehicle.

16 Q Was that under the driver's seat?

17 A Yes, sir.

18 Q Did you seize both of those driver's licenses?

19 A I did.

20 Q I'll show you -- excuse me -- Government's Exhibits 25
21 and 26 and ask you if you recognize these as evidence that you
22 seized from the blue Cadillac?

23 A Yes, sir. Those are the same two.

24 Q And what are they?

25 A These are the two driver's licenses. One has the issuing

1 date of -- of May 2nd, 2013, and the other one has an older
2 issuing date. One's, obviously, a little bit different in
3 texture and stuff, but essentially, they're both Missouri
4 driver's licenses for Mr. Warren.

5 MR. STEVENS: All right. I offer Government's
6 Exhibits 25 and 26, Judge.

7 MR. JIMERSON: No objection.

8 THE COURT: They are received into evidence.

9 MR. STEVENS: Thank you, Your Honor.

10 Q (By Mr. Stevens) All right. You seized these from the
11 Cadillac that day, Agent Townsend?

12 A Yes, sir.

13 Q And, again, they both indicate that they are driver's
14 licenses for Daryl Warren?

15 A Yes, sir.

16 Q They appear to have a photograph and signature of
17 Mr. Warren?

18 A Yes, sir.

19 Q And you indicated that on what is, apparently, the newer
20 of these two was issued on May 2nd of 2013?

21 A Yes, sir.

22 Q Approximately one month before the arrest and search of
23 the car?

24 A That's correct.

25 MR. STEVENS: Next, I want to show you Government's

1 Exhibit 29, Agent Townsend.

2 Judge, this is a certified record from the Missouri
3 Department of Revenue, Government's Exhibit 29. It is
4 certified as a record, an official record of the Missouri
5 Department of Revenue, and I would offer it as Government's
6 Exhibit 29.

7 MR. JIMERSON: No objection.

8 THE COURT: Exhibit 29 is received.

9 MR. STEVENS: Thank you, Your Honor.

10 Q (By Mr. Stevens) Turning to the first page of that
11 exhibit, Agent Townsend, does this indicate the owner
12 information for the 2000 blue Cadillac?

13 A Yes, sir. It identifies Daryl Warren.

14 Q All right. It also indicates a telephone number here.
15 Do you see that?

16 A Yes, sir.

17 Q 314-372-63 -- 6037?

18 A Yes, sir.

19 Q That's 6037?

20 A Yes, 6037, yes, sir.

21 Q All right. This is a record for a 2000 Cadillac?

22 A Yes, sir.

23 Q And indicates a license of DH7F2Z, is that right?

24 A That's correct.

25 Q Turning to the next page, that appears to be a signature

1 for Daryl Warren, the owner?

2 A Yes, sir.

3 Q And turning to the next page, we again have an owner's
4 name?

5 A That's correct. Again, it identifies Daryl Warren.

6 Q The same telephone number?

7 A Yes, sir.

8 Q This has a further description of the vehicle?

9 A Yes, sir.

10 Q And how was that described?

11 A As a 2000 Cadillac, blue in color.

12 Q And, again, it lists -- this document lists the same
13 license number as was depicted in the photograph, Government's
14 Exhibit 11, right?

15 A Yes.

16 Q Signature of the owner there under penalty of perjury
17 appears to be a signature for Daryl Warren?

18 A Yes, sir.

19 Q All right. Now, we've talked about the contents of the
20 actual interior of the Cadillac. Did you search other areas
21 of the Cadillac?

22 A Yes, sir.

23 Q Did that include the trunk?

24 A It did.

25 Q And I'll show you what I've marked as Government's

1 Exhibit 30 that's already been admitted into evidence. What
2 did you find there?

3 A This particular photo identifies a Ruger .223 assault
4 rifle with a loaded magazine seated just behind it while they
5 both sat inside of a box in the trunk.

6 Q All right. Did you seize that rifle from the trunk of
7 that car?

8 A I did. I seized -- I seized that particular rifle. Then
9 once I had it in my hands, I was able to clear it, wrap a band
10 around the chamber of the weapon to keep it safe and prevent
11 it from any type of discharge.

12 Q Agent Townsend, I want to show you what I've marked as
13 Government's Exhibit 31. Do you recognize Exhibit 31?

14 A Yes, sir. This is the -- the assault rifle that's
15 depicted in the photograph.

16 Q All right. And you seized that on June 5th of 2013?

17 A Yes, sir.

18 Q From where?

19 A From the trunk of the vehicle, of the blue Cadillac.

20 MR. STEVENS: All right. Thank you, sir.

21 I offer Government's Exhibit 31, Your Honor.

22 MR. JIMERSON: No objection.

23 THE COURT: Exhibit 31 is received into evidence.

24 Q (By Mr. Stevens) You mentioned that you rendered this
25 safe and put a zip tie through so that it's not operable?

1 A That's correct.

2 Q Is it still in that condition?

3 A It is, sir.

4 Q Thank you. Next, I want to show you what I've marked as
5 Government's Exhibit 31A. You mentioned that the magazine of
6 Government's Exhibit 31, the assault rifle, was loaded?

7 A Yes, sir.

8 Q I show you Government's Exhibit 31A. Do you recognize
9 31A?

10 A Yes, sir. This is the packaging containing the 23 rounds
11 of .223-caliber ammunition that was removed from the magazine
12 of that particular weapon.

13 MR. STEVENS: Thank you.

14 Your Honor, I'd offer Government's Exhibit 31A.

15 MR. JIMERSON: No objection.

16 THE COURT: 31A is received into evidence.

17 MR. STEVENS: Thank you.

18 Q (By Mr. Stevens) Agent, you say that these were the
19 rounds that were seized from Government's Exhibit 31?

20 A Yes, sir.

21 Q How many were there?

22 A Twenty-three.

23 Q Those are a couple of them. Do you see those there?

24 A Yes, sir.

25 Q Next, I want to show you Government's Exhibit 32, already

1 admitted into evidence. What does that photograph depict?

2 A This is a photo of the Hi-Point .40-caliber,
3 semi-automatic pistol that was recovered in the rear of the --
4 it was in the trunk, but it was at the far rear of the trunk.
5 As this photo here -- the black covering felt that you see in
6 the background up against the green oil can, that's the back
7 of the rear of the trunk, and then where the white paper is
8 along the bottom, that's actually the bottom of the trunk.
9 The blue square that you can see in this area right in here is
10 actually the back of the rear seat, so it -- this particular
11 cutout or hole that's in the rear of the trunk is actually an
12 area to allow anyone that's sitting in the passenger's
13 compartment of the vehicle to be able to reach directly into
14 the trunk.

15 Q All right. And this gun with the handle is pointed
16 towards that armrest opening into the -- into the passenger's
17 compartment?

18 A That's correct.

19 Q I'll show you now Government's Exhibits 33 and 33A.

20 MR. JIMERSON: Yes, sir.

21 Q (By Mr. Stevens) Do you recognize Government's Exhibit
22 33?

23 A Yes, sir. This is the .40-caliber pistol that was seized
24 from the -- from the blue Cadillac that's depicted in the
25 photo.

1 Q All right. And Government's Exhibit 33A?

2 A Yes, sir. These are the eight rounds of .40-caliber
3 ammunition that were recovered from the magazine that was
4 inside the firearm --

5 Q All right. So this gun --

6 A -- depicted in this photo.

7 Q This gun was actually loaded with eight rounds of
8 ammunition?

9 A Yes, sir, and the magazine was actually inserted into the
10 magazine well.

11 MR. STEVENS: Your Honor, I offer Government's
12 Exhibits 33 and 33A.

13 MR. JIMERSON: No objection.

14 THE COURT: Exhibits 33 and 33A are received into
15 evidence.

16 MR. STEVENS: Thank you.

17 Q (By Mr. Stevens) You mentioned there were eight rounds of
18 ammunition in Government's Exhibit 33?

19 A Yes, sir.

20 Q Are these, several of those there, .40-caliber rounds?

21 A Yes, sir.

22 Q After you packaged this evidence, did you place it in ATF
23 evidence bags?

24 A I did, sir.

25 Q And did you seal those bags with evidence tape?

1 A I did, sir.

2 Q And place your initials and date on the seal?

3 A Yes, sir.

4 Q And did you sign the evidence identification label on
5 each of these things, each of these evidence bags?

6 A I did, sir.

7 Q And then they were submitted to the ATF evidence vault?

8 A Yes, sir.

9 Q Where they remained until trial?

10 A Yes, sir.

11 MR. STEVENS: Thank you. Nothing further, Your
12 Honor.

13 THE COURT: Cross-examination.

14 MR. JIMERSON: Thank you, Your Honor.

15 THE COURT: Actually, we'll take our morning recess
16 at this time, even though we got a late start. So, members of
17 the Jury, please remember the instructions I've given you
18 earlier about this and all other recesses not to discuss the
19 case among yourselves or to communicate in any way about the
20 case and to keep an open mind until you've heard all of the
21 evidence in the case. Court will be in recess for 15 minutes.

22 (Court recessed from 10:29 a.m. until 10:46 a.m.)

23 (The following proceedings were held outside the hearing
24 and presence of the Jury.)

25 THE COURT: All right. You may bring in the Jury.

1 (The following proceedings were held within the hearing
2 and presence of the Jury.)

3 THE COURT: You may proceed with the
4 cross-examination.

5 MR. JIMERSON: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 BY MR. JIMERSON:

8 Q Special Agent Jason Townsend?

9 A Yes, sir.

10 Q Good morning, sir.

11 A Good morning.

12 Q Your duties, as I heard, was to collect the evidence, is
13 that correct, sir?

14 A That's correct.

15 Q Okay. And, basically, when you went -- you cannot
16 testify as to who put the evidence where? You just collect
17 it, is that correct? Let me rephrase for you. Okay. We're
18 talking about this car, this blue Cadillac, correct?

19 A Yes, sir. Yes, sir.

20 Q You found evidence in that blue Cadillac, but you can't
21 say how it got there, is that correct, sir?

22 A That's correct.

23 Q Okay. In fact, you've heard -- have you heard the name
24 Michael Twitty and Robert Washington in this matter, sir?

25 A Yes, sir.

1 Q Okay. All right. And have you heard -- well, let me ask
2 you this. Do you -- can you say whether or not Robert
3 Washington or Michael Twitty placed evidence in this car, the
4 evidence that you spoke -- that you collected, sir?

5 A No.

6 Q Okay. So you don't know for sure whether that happened
7 or not, is that correct, sir?

8 A That's correct.

9 Q All right. Now, you were shown -- and it was admitted
10 into evidence -- Government Exhibit #32, and I'll show it to
11 you again. You see that on the screen, sir?

12 A Yes, sir.

13 Q Okay. Again, what is that?

14 A That is the .40-caliber Hi-Point pistol that was
15 positioned in the rear of the trunk of the blue Cadillac.

16 Q Okay. And you said earlier that this compartment up here
17 at the top of the picture is a compartment within the car that
18 you can access the trunk from, sir?

19 A Yes, sir.

20 Q And you said that's on the passenger's side, sir?

21 A No, sir. That's in the -- this area right here is the
22 back of the rear seat. There's a little latch that pulls
23 down, like a padded latch that can be pulled down, allowing
24 anyone who's in the passenger's compartment of the vehicle to
25 reach into the trunk.

1 Q Okay. That's what I'm getting at. So anyone who is in
2 the passenger's compartment can reach into the trunk, correct?

3 A That's correct.

4 Q Okay. Not necessarily the driver, is that correct, sir?

5 A Anyone that's inside the passenger's compartment could
6 get to that, yes.

7 Q Okay. Let's take a close look at this gun that you
8 seized. That's a .40-caliber, you indicated, sir?

9 A Yes, sir.

10 Q Look at the direction that it's pointing; do you see
11 that, sir?

12 A Yes, sir.

13 Q Okay. And the handle of that, of that weapon, sir, is
14 pointed to -- it's to the right, is that correct, sir?

15 A As we're looking at it, yes, sir.

16 Q Okay. So a person sitting in the front seat, reaching
17 around, doesn't necessarily -- isn't -- well, let me ask you
18 this. Isn't it not positioned where a person that's driving
19 the vehicle can reach that weapon, sir?

20 A Say that again now.

21 Q Is this weapon positioned where a person that's driving
22 cannot reach this weapon, sir?

23 A No. I would think someone who's sitting in the driver's
24 seat could get to this vehicle.

25 Q All right. Very good then.

1 A I mean get to this firearm.

2 Q Then, again, look at the handle. The handle is pointed
3 and in a different direction opposed to the driver, is that
4 correct, sir?

5 A I'm not sure where the question is going. I mean I guess
6 if I was -- if I was going to reach into this, this vehicle,
7 if I was sitting in the driver's seat, if I was left-handed, I
8 could reach around and that gun would be positioned exactly
9 where I'd want it to if I was a left-handed shooter.

10 Q All right. And Mr. Warren is right-handed, so it's --
11 according to what you just testified to, it's not positioned
12 properly for a right-handed person, is that correct?

13 A Not necessarily.

14 Q Okay. I just want to get at it, but, basically, you're
15 looking at this, and it appears to be the position is for a
16 person either sitting on the right-hand side of the car to
17 reach in or a person who is left-handed, is that correct?

18 A No. I mean you could reach in that compartment with any
19 hand and grab that gun. It doesn't necessarily have to be
20 grabbed to fire from that position, so you could just need to
21 get to the gun.

22 Q Okay. So you're saying that a person can reach in and
23 grab it in the middle if they wanted to, right, or grab it
24 from the middle portion rather as opposed to grabbing it from
25 the handle?

1 A I'm just saying the gun is sitting in a position. It's
2 at the back of the trunk, so that anyone inside the
3 passenger's compartment could reach in and grab it. It's not
4 positioned way back to the rear of the vehicle --

5 Q I understand. I understand.

6 A -- out of reach.

7 Q Okay. Now, we've talked about the -- the -- and you may
8 have answered this already and with my general question. You
9 had knives that you found in the car and gloves, is that
10 correct, sir?

11 A That's correct.

12 Q Again, you don't know who put that there? I've talked
13 about two other people, is that correct, sir?

14 A That's correct.

15 Q All right. And we also looked at this assault rifle that
16 was also in the back of the trunk, is that correct, sir?

17 A That's correct.

18 Q Again, you don't know who placed that there, is that
19 correct?

20 A No, sir.

21 MR. JIMERSON: Okay. I believe that's all, Your
22 Honor. Thank you.

23 THE COURT: All right. Any redirect?

24 MR. STEVENS: Just one, Judge.

25

REDIRECT EXAMINATION

1
2 BY MR. STEVENS:

3 Q Agent Townsend, just to be clear, when you're referring
4 to the passenger's compartment of the -- thank you. When
5 you're referring to the passenger's compartment of the
6 Cadillac, you're referring to the -- basically, the entire
7 interior of the Cadillac that holds people, right?

8 A That's correct. Where the seats are where people sit,
9 not the trunk where you put items, not humans.

10 Q That would include -- that would include the driver's
11 seat, the front passenger's seat, the back seat?

12 A That's correct.

13 MR. STEVENS: Thank you.

14 Nothing further, Your Honor.

15 THE COURT: All right. You may step down.

16 You may call your next witness.

17 MR. STEVENS: Thank you, Judge.

18 MS. BEHRENS: Judge, the Government's next witness is
19 Jeff Eleveld.

20 THE COURT: Say that name again.

21 MS. BEHRENS: Jeff Eleveld.

22 THE COURT: Okay. Mr. Eleveld, if you'll step right
23 over here to the clerk to be sworn, please.

24 MS. BEHRENS: Your Honor, may I inquire?

25 THE COURT: You may.

1 MS. BEHRENS: Thank you.

2 JEFF ELEVELD,

3 HAVING BEEN FIRST DULY SWORN, WAS EXAMINED AND TESTIFIED AS
4 FOLLOWS:

5 DIRECT EXAMINATION

6 BY MS. BEHRENS:

7 Q Could you state your name again for the Jury, please?

8 A Jeff Eleveld.

9 Q And by whom are you employed?

10 A I'm a Special Agent with the Bureau of Alcohol, Tobacco,
11 Firearms and Explosives.

12 Q How long have you been employed with ATF?

13 A Over 13 years.

14 Q And in the 13 years that you've been employed by ATF,
15 have you been involved in a particular type of investigation?

16 A Mainly firearms.

17 Q Okay. And when you were first hired by ATF, did you
18 undergo any training?

19 A Yes.

20 Q And what was that?

21 A Basic criminal investigator school at the federal academy
22 and then advanced ATF training.

23 Q And approximately how long did that training take?

24 A Both were about six months.

25 Q And did that training include how to identify firearms

1 and how to operate firearms?

2 A Yes.

3 Q And in your 13 years with ATF, investigating primarily
4 firearms, did you also develop additional experience in
5 identifying and operating firearms?

6 A Yes.

7 Q Approximately how many times would you say you've
8 identified a firearm in the 13 years you've been with the --

9 MR. JIMERSON: Your Honor, I'm going to -- let me at
10 this point object to his number of times, and for purposes of
11 speeding up this matter, I can stipulate to his credentials,
12 Mr. Eleveld's numbers. I can stipulate to that if that's what
13 you're trying to establish.

14 THE COURT: Well --

15 MS. BEHRENS: I am trying to establish his
16 credentials, Your Honor, but I'd prefer the Jury to hear it.

17 THE COURT: Yeah, I'm going to overrule the
18 objection. You can -- I mean I think she's entitled to do
19 this.

20 MR. JIMERSON: Yes, ma'am.

21 THE COURT: Okay.

22 MS. BEHRENS: Thank you.

23 Q (By Ms. Behrens) So can you approximate how many times
24 you've identified and operated a firearm in the 13 years
25 you've been with ATF?

1 A It's thousands.

2 Q Now, I'm using the term "firearm"; you're aware that
3 there is a specific federal definition for what a firearm is?

4 A That's correct.

5 Q Can you tell the Jury what that definition is, please?

6 A Sure. It's any weapon, to include a starter gun, which
7 will or is designed to or may be readily converted to expel a
8 projectile by the action of an explosive.

9 Q And how do you go about determining whether a weapon
10 meets the definition of a firearm; that is, how do you
11 determine whether a weapon is capable of expelling a
12 projectile by the action of an explosive?

13 A Usually, we do what's called a test-fire.

14 Q And what does that mean?

15 A Basically, what it is is we would remove the projectile
16 from a live round of ammunition as well as the gunpowder and
17 then we insert that shell into the weapon and then pull the
18 trigger. If the firing pin hits the primer and activates the
19 primer, we call that a properly functioning weapon.

20 Q And, therefore, then it would meet the definition of a
21 firearm under federal law, is that correct?

22 A That's correct.

23 Q Now, in the past few years with ATF, have you also been
24 given a more specific responsibility?

25 A Yes.

1 Q And what is that?

2 A I'm considered a Certified Nexus Expert.

3 Q And what does a Certified Nexus Expert do?

4 A We're -- we're trained to determine where a firearm has
5 been manufactured.

6 Q Did that require additional training?

7 A Yes. ATF has a nexus school. It's about a week long.

8 Q You attended that?

9 A Yes.

10 Q And that was, you said, approximately two years ago?

11 A I believe it was March of 2012.

12 Q And since becoming an examiner, a nexus examiner for ATF,
13 how many firearms approximately have you examined for purposes
14 of determining where the firearms are manufactured?

15 A Over 50 but probably less than 100.

16 Q And have you testified as an expert before in the area of
17 nexus determination?

18 A Yes.

19 Q Okay. And how -- explain for the Jury how you go about
20 determining where a firearm is manufactured.

21 A I first start with the actual firearm, the markings on
22 the firearm as well as the serial number, and that's basically
23 your -- your starting point. From there, we use resources --
24 public, private, commercial as well as ATF, information that
25 only ATF has.

1 Q In your capacity as a firearms examiner and a Certified
2 Nexus Examiner, did you -- did the United States Attorney's
3 Office ask you to examine two weapons in the case of United
4 States against Daryl Warren?

5 A Yes.

6 Q And, specifically, were you asked to examine two weapons
7 to determine, first, whether they met the definition of a
8 firearm under federal law and, second, to determine where
9 those two weapons were manufactured?

10 A That's correct.

11 MS. BEHRENS: Your Honor, may I approach the witness?

12 THE COURT: You may.

13 MS. BEHRENS: Your Honor, for the record, as
14 Mr. Stevens established, this firearm has been rendered
15 inoperable, and there's no ammunition with it.

16 Q (By Ms. Behrens) Agent Eleveld, I've just handed you
17 what's already been admitted into evidence as Government's
18 Exhibit 33. Do you recognize that exhibit?

19 A Yes.

20 Q And if we could just try and keep the gun pointed toward
21 the back, that would be great.

22 A Oh, sorry.

23 Q I mean I know it's inoperable, but it's my own
24 personal --

25 A No. That's my fault.

1 Q No. That's all right.

2 A I'm used to being alone when I do this.

3 Q No. That's quite all right.

4 A Yes, I recognize it.

5 Q Okay. And how is it you're able to recognize it?

6 A From the markings on the weapon, the serial number, and
7 then my signature on the evidence tag.

8 Q And is this one of the weapons you were asked to examine
9 by the United States Attorney's Office in this case?

10 A Yes.

11 Q You mentioned a serial number. Can you tell the Jury,
12 please, what that serial number is?

13 A Yes. It's going to be X, as in X-ray, 777949.

14 Q And you mentioned the serial number is one of the ways
15 you're able to tell this was the firearm you examined
16 previously?

17 A Yes.

18 Q Okay. Were you also able to determine the make, model,
19 and caliber of that weapon?

20 A Yes. This is a --

21 Q Okay. Go ahead. Sorry.

22 A It's a Hi-Point Model JCP 40 S&W caliber.

23 Q Okay. Now, were you asked to determine with respect to
24 Government's Exhibit 33 whether or not that weapon is a
25 firearm, meaning was it capable of expelling a projectile by

1 the action of an explosive?

2 A Yes. I test-fired this weapon.

3 Q Okay. And when you test-fired it, you described for us
4 earlier how you go about doing that. Is that how you
5 test-fired this particular weapon?

6 A Same exact way.

7 Q And after you test-fired it, what were you able to
8 conclude?

9 A That it functioned as designed.

10 Q And with respect to Government's Exhibit 33, were you
11 also able to determine where it was manufactured?

12 A Yes.

13 Q And how did you go about doing that?

14 A Starting with the markings on the gun as well as the
15 serial number and then referencing the material that's
16 available to us.

17 Q And you mentioned markings. I noticed when I was looking
18 at it that there's a marking on there that says Iberia, Ohio.
19 Is that something that you considered? Is that right, first
20 of all? Do I have that right?

21 A Yeah, that's correct.

22 Q Is that one of the markings you -- you -- you mean when
23 you just said you start with that?

24 A Yeah, that's correct. Most firearms are required to put
25 a place of manufacture, and that's a starting point; however,

1 not all guns that are marked -- like in this case, this says
2 Iberia, Ohio. On some other guns, they might be marked one
3 way, but they might be actually manufactured at another
4 location.

5 Q In those situations, is typically the marking on the
6 firearm the parent company --

7 A Usually --

8 Q -- of that firearm?

9 A -- yes.

10 Q But in this particular case, it does say Iberia, Ohio, on
11 it, is that correct?

12 A That's correct.

13 Q And you mentioned it was a starting point. Were you able
14 to determine where in fact this firearm was manufactured?

15 A It was manufactured in Ohio.

16 Q And that was based on your experience and training as a
17 nexus firearm examiner?

18 A That's correct.

19 Q Let me take that weapon from you, and I'll hand you this
20 one, if I could please. Thank you. Agent Eleveld, I've now
21 handed you what's already been admitted into evidence as
22 Government's Exhibit 31. Do you recognize that exhibit?

23 A Yes.

24 Q And how were you able to recognize that exhibit?

25 A From the markings and the serial number and then my

1 signature on evidence tag.

2 Q Okay. And can you tell me again, what is the serial
3 number on that, please?

4 A That's going to be 18279178.

5 Q And can you also -- were you also able to determine the
6 make, model, and caliber of this particular weapon?

7 A Yeah. This is a Ruger Mini-14, and the caliber is .223.

8 Q Okay. Now, were you able to determine whether or not
9 this weapon was capable of expelling a projectile by the
10 action of an explosive?

11 A Yes.

12 Q And how did you do that?

13 A The same way with the handgun, using a live round, taking
14 out the projectile and the powder.

15 Q And after test-firing it in that manner, were you able to
16 conclude whether this weapon was able to operate as designed?

17 A Yes, it was.

18 Q And as a result, are you able to conclude that it meets
19 the definition, federal definition of a firearm?

20 A Yes.

21 Q Did you also examine this firearm for the purpose of
22 determining where it was manufactured?

23 A Yes.

24 Q And you mentioned earlier that you start with the
25 markings on the firearm, is that correct?

1 A That's correct.

2 Q Is that what you did in this case?

3 A Yes.

4 Q Now, in this case, it states a place?

5 A Yes.

6 Q Is not it stamped on? What is that?

7 A It has Southport, Connecticut.

8 Q Okay. And is in fact based upon -- did you then do
9 additional research to determine whether this weapon was
10 manufactured in Southport, Connecticut?

11 A Yes. This is the example of having the stamp of one
12 state but it's actually manufactured in another location.

13 Q Okay. And where were you able to conclude based upon
14 your experience and training that this particular firearm was
15 manufactured?

16 A This one was manufactured in New Hampshire.

17 Q Now, let me ask -- I'll take that from you, so you don't
18 have to stand there and keep holding it up.

19 A I could switch it to there.

20 Q Thank you. Now, with respect to these two weapons, Agent
21 Eleveld, when did you conduct your examination approximately?

22 A I think it was around February 10th I finished.

23 Q You had not seen either of these firearms prior to that
24 date, had you?

25 A No.

1 Q And you -- other than examining these firearms for the
2 purposes we asked, you were not involved in the investigation
3 against Daryl Warren, were you?

4 A No, I was not.

5 Q And then let me ask just a couple of final questions.
6 With respect to the two weapons you were asked to example --
7 asked to examine, specifically, Government's Exhibit 31 and
8 33, based on your training and experience, do you have an
9 opinion whether those two firearms meet the federal definition
10 of firearm?

11 A Yes.

12 Q And what is that opinion?

13 A They both would be classified as firearms.

14 Q Okay. And do you also have an opinion as to whether
15 those two weapons, Government's Exhibit 31 and 33, are
16 manufactured outside of the state of Missouri?

17 A They both were manufactured outside the state of
18 Missouri.

19 MS. BEHRENS: Okay. Thank you.

20 Your Honor, I have no further questions for this
21 witness.

22 MR. JIMERSON: No questions, Your Honor.

23 THE COURT: All right. You may step down.

24 THE WITNESS: Thank you.

25 THE COURT: You may call your next witness.

1 MR. STEVENS: Thank you, Judge. At this time, the
2 Government would offer a stipulation.

3 Can I have just a moment, Judge?

4 THE COURT: Sure.

5 MS. BEHRENS: Your Honor, may I approach? May we
6 approach?

7 THE COURT: Yeah, you may.

8 (A bench conference was held on the record and outside of
9 the hearing of the Jury as follows:)

10 MS. BEHRENS: The first thing I think he's going to
11 enter is the stipulation.

12 THE COURT: The *Old Chief* stipulation?

13 MS. BEHRENS: The *Old Chief*, I believe, but then we
14 need to -- he's going to do 404(b) after that. I did not
15 provide to you in our packet of instructions the one given
16 during trial.

17 THE COURT: Yeah.

18 MS. BEHRENS: I do have the one we've submitted to
19 you if you want to use that as a starting point. No?

20 THE COURT: I've got it.

21 MS. BEHRENS: I just wanted to make sure.

22 THE COURT: It hasn't changed since this book.

23 MS. BEHRENS: Well, it hasn't changed. The question
24 I have for you, though, is the 404(b) that we submitted to
25 you, the instruction for afterwards, also includes, pursuant

1 to the case law that I found, that it's offered for the
2 purposes but it's also offered for the purpose of determining
3 whether the defendant had a propensity to participate in
4 crime. It's one of the elements we have to prove, so it's
5 offered for that purpose as well. Do you know what I'm saying
6 with respect to --

7 THE COURT: Yeah.

8 MS. BEHRENS: But an entrapment -- the entrapment
9 instruction is given.

10 THE COURT: Yeah. No. I understand.

11 MS. BEHRENS: Okay.

12 THE COURT: The problem is the Jury doesn't need to
13 know that unless the entrapment decision is given --

14 MS. BEHRENS: Correct.

15 THE COURT: -- or instruction.

16 MS. BEHRENS: So we don't have to give it. I guess I
17 was just wondering in terms of what -- then that's fine. We
18 can leave that out now and then decide whether it's going to
19 be given later. I don't think it's going to make really a
20 difference at this point.

21 THE COURT: Yeah, I mean I -- you know --

22 MS. BEHRENS: I just wanted to make you aware of it.

23 THE COURT: Yeah, I mean it, obviously, does go to
24 that issue, and so I just -- yeah, I think -- I think I'll
25 just give the standard 404(b) --

1 MS. BEHRENS: Okay.

2 THE COURT: -- limiting instruction at this time.

3 MS. BEHRENS: And that standard 404(b) doesn't
4 include the actual -- I know in our one that we submit to you
5 at the end of trial or that we give to the Jury or you give to
6 the Jury from the trial contains the actual convictions in it,
7 or do you need that information here, or are you just going to
8 go with what --

9 THE COURT: I'm just going to use the general one.

10 MS. BEHRENS: Okay. Thank you.

11 MR. STEVENS: Judge, what I intend to do right now is
12 do the felon stipulation. I have the instruction for that. I
13 don't know if you read that at the time --

14 THE COURT: Yeah.

15 MR. STEVENS: -- as far as we've agreed on this.

16 THE COURT: Yeah.

17 MR. STEVENS: And so I was going to offer that, and
18 then I was going to offer the 404(b) evidence.

19 THE COURT: I'll read this beforehand, and then after
20 that, then I'll read the 404(b) one. Okay?

21 MR. STEVENS: All right. Thank you.

22 MS. BEHRENS: Thank you, Judge.

23 (The following proceedings were held within the hearing
24 of the Jury.)

25 THE COURT: Oh, yeah. Sorry. I just told you I

1 would do this.

2 Members of the Jury, the Government and the Defendant
3 Daryl Warren have stipulated, that is they've agreed, that
4 certain facts are as counsel are about to state to you. He's
5 going to read you a stipulation. You must, therefore, treat
6 those facts as having been proven without any further
7 evidence. You may read the stipulation.

8 MR. STEVENS: Thank you, Your Honor. Your Honor, I
9 offer Government's Exhibit 44, the stipulation of facts.

10 THE COURT: All right. It's received into evidence.

11 MR. STEVENS: May I publish, Judge?

12 THE COURT: You may.

13 MR. STEVENS: Thank you. This is Government's
14 Exhibit 44, a stipulation of facts in *United States versus*
15 *Daryl Warren*. The parties hereby agree and stipulate that the
16 following --

17 THE COURT: Slow down.

18 MR. STEVENS: I'm sorry.

19 THE COURT: The court reporter is still taking it
20 down.

21 MR. STEVENS: Yes.

22 -- the following facts are true and are to be
23 accepted as proven in this case: That before June 5, 2013,
24 Defendant Daryl Warren was convicted of one or more felony
25 crimes, that is crimes punishable by imprisonment for a term

1 exceeding one year.

2 And it's signed by myself, Mr. Jimerson, and the
3 Defendant. Thank you, Judge.

4 THE COURT: All right. Hold on just a second.
5 Sorry. Just a moment.

6 All right. Members of the Jury, the next thing
7 you're going to hear is you're going to hear some evidence
8 from the Government that the Defendant has certain prior
9 convictions, and you may consider this evidence of the -- the
10 nature of these prior convictions only if you unanimously find
11 it is more likely true than not true, and this is a lower
12 standard than proof beyond a reasonable doubt. You decide it
13 by considering all the evidence and deciding what evidence is
14 more believable. If you find this evidence is more likely
15 true than not true or that it has been proved, then you may
16 consider it to help you decide the Defendant's motive,
17 opportunity, intent, plan, and knowledge. You should give it
18 the weight and value you believe it is entitled to receive.
19 If you find that it has not been proved, you must disregard
20 it. Remember that even if you find that the Defendant may
21 have committed a similar act in the past, this is not evidence
22 that he committed such an act in this case. You may not
23 convict a person simply because you believe he may have
24 committed similar acts in the past. He's on trial only for
25 the crime charged here, and you may consider the evidence of

1 prior acts only on the issues of -- that I have stated above.

2 You may --

3 MR. JIMERSON: Your Honor, before he -- may I -- if I
4 can renew my objection motions to that matter?

5 THE COURT: Yes, the objection is renewed, and the
6 ruling is the same.

7 You may proceed, Mr. Stevens.

8 MR. STEVENS: Thank you, Your Honor. I would offer
9 Government's Exhibits 38, 39, 40, 41, and 42.

10 THE COURT: All right. And those Exhibits 38, 39,
11 40, 41, and 42 are received into evidence over the objection
12 of the Defendant.

13 MR. STEVENS: Thank you, Your Honor. And those
14 are -- Government's Exhibit 38 is a certified record of the
15 22nd Judicial Circuit Court, City of St. Louis, State of
16 Missouri, and Government's Exhibit 38 indicates on the
17 Judgment possession of a controlled substance, two counts on
18 which Mr. Warren was convicted on August 24 of 2007. It
19 indicates on the second page, on each of Counts I and II, a
20 sentence of 15 years, suspended execution of sentence, and a
21 period of five years of supervision by the Missouri Bureau of
22 Probation and Parole, and that is August 24 of 2007.

23 Government's Exhibit 39, a certified record of the
24 United States District Court for the Eastern District of
25 Missouri, in *United States versus Daryl Warren*, Case No.

1 4:06-CR-287, a conviction for felon in possession of a firearm
2 in violation of 18 United States Code § 922(g)(1). The date
3 of that conviction and Judgment, July 20th of 2007, the
4 Honorable Jean C. Hamilton. On this second page, it indicates
5 a sentence of 24 months' imprisonment in the United States
6 Bureau of Prisons and upon release from imprisonment a term of
7 supervised release of two years. That is July 20 of 2007.

8 Government's Exhibit 40 is a certified record, again,
9 from the 22nd Judicial Circuit Court, City of St. Louis, *State*
10 *versus Daryl Warren*. This is dated July 2nd of 2001. These
11 are convictions for trafficking, second degree, and possession
12 of a controlled substance. On July 2nd of 2001 are the dates
13 of the convictions. On each of those counts, a term of seven
14 years in the Missouri Department of Corrections. The
15 indictment page indicates that that was -- the trafficking,
16 the drug trafficking count, was in regards to cocaine base, a
17 controlled substance, and that is Government's Exhibit 40.

18 Government's Exhibit 41, also a certified record from
19 the Missouri -- strike that -- from the 22nd Judicial Circuit
20 Court, State of Missouri. This shows a conviction, May 17th
21 of 1999, possession of a controlled substance. Defendant
22 initially was sentenced to a suspended imposition of sentence
23 and two years of probation. On July 2nd of 2001, the
24 probation was revoked, and this Defendant was sentenced for
25 possession of a controlled substance to seven years in the

1 Missouri Department of Corrections.

2 And, finally, Government's Exhibit 42, the other --
3 from the same dates, this is a certified record of the 22nd
4 Judicial Circuit Court, State of Missouri, again, May 17 of
5 1999, the same date as the previous. Possession of a
6 controlled substance, cocaine base, is the conviction in *State*
7 *versus Daryl Warren*. The Defendant was sentenced to two years
8 of probation. On July 2nd, 2001, that probation was revoked
9 and Mr. Warren was sentenced to seven years in the Missouri
10 Department of Corrections.

11 Your Honor, that concludes the Government's evidence
12 pursuant to Rule 404(b).

13 THE COURT: All right.

14 MR. STEVENS: May I have just a moment, Judge?

15 THE COURT: You may.

16 MR. STEVENS: May we approach, Judge?

17 THE COURT: You may.

18 MR. STEVENS: Thank you.

19 (A bench conference was held on the record and outside of
20 the hearing of the Jury as follows:)

21 MR. STEVENS: Judge, subject just to making sure that
22 we have the exhibits in that we want in, I am prepared to
23 rest.

24 THE COURT: Okay. And then what do we need to do
25 next?

1 MR. JIMERSON: Well, first of all, Judge, I'd like
2 to -- I'll renew my objection regarding 404(b) information.

3 THE COURT: Yeah.

4 MR. JIMERSON: And I just want to stand clear on
5 that, and after Mr. Stevens read that, Judge, I particularly
6 want to ask this Court for a mistrial based on that. I
7 understand your ruling, Judge, but based on after reading it,
8 I think it's unduly prejudicial to that even given your
9 instructions.

10 Once they rest, I'll make my motion for judgment of
11 acquittal, Judge.

12 THE COURT: Okay. And then do you expect to present
13 evidence?

14 MR. JIMERSON: I want to --

15 THE COURT: I mean I know you --

16 MR. JIMERSON: I probably want to make a record. He
17 has not -- because we've gone back and forth -- and I've
18 expressed this to Mr. Stevens -- about his testifying, and so
19 probably outside of the Jury, I may want to put him on the
20 stand and see what he wants to do, Judge, but at the last I
21 heard, he did not. After probably this, probably he does, so
22 I'm not sure.

23 THE COURT: Okay. What I'd like to do is spend some
24 time working on jury instructions over the lunch hour, so it's
25 11:20 now. I think what I'd like to do is tell the Jury to

1 come back at 1:00.

2 MR. JIMERSON: Yes, ma'am.

3 THE COURT: And then hope by then we can have
4 everything done, and if he's going to testify, he'll testify.
5 We can then -- after his testimony, we can take another short
6 break and do a final record on any instructions.

7 MR. JIMERSON: Okay.

8 THE COURT: And then -- you know. And so I'll hear
9 your argument and everything once the Government rests in
10 front of the Jury.

11 MR. STEVENS: Thanks, Judge.

12 THE COURT: And you can clean up your exhibits if you
13 left anything out. I don't think you did based on my --

14 MR. STEVENS: No.

15 THE COURT: -- review of it, but you can double-check
16 that over the lunch hour.

17 MR. STEVENS: Thank you.

18 MR. JIMERSON: Thank you.

19 (The following proceedings were held within the hearing
20 of the Jury.)

21 THE COURT: Mr. Stevens or Ms. Behrens.

22 MS. BEHRENS: No. It's Mr. Stevens. I'm sorry. I
23 was just trying to clear it.

24 MR. STEVENS: Yes, Judge.

25 THE COURT: You can proceed.

1 MR. STEVENS: Thank you, Judge. The Government has
2 finished its evidence, and at this time, the Government rests.

3 THE COURT: All right.

4 MR. STEVENS: Thank you.

5 THE COURT: Members of the Jury, we're going to take
6 a longer lunch hour right now because of procedural things we
7 have to do at this stage in the case. I want to remind you of
8 the instruction I gave you earlier that you should not discuss
9 this case among yourselves or with anyone else during this or
10 any other recess or communicate about it in any way and that
11 you should keep an open mind until the case is actually
12 submitted to you, which is not happening right now. The --
13 I'm going to give you a little longer lunch hour because we
14 need to do this, so I'm going to ask you to be back at 1:00
15 p.m., and then we will see you all, so the Jury is excused
16 until 1:00 p.m. And, again, just leave your notebooks here on
17 the chair.

18 (The following proceedings were held outside the hearing
19 and presence of the Jury.)

20 THE COURT: All right. You all may be seated.

21 Mr. Jimerson, you may --

22 MR. JIMERSON: Thank you, Your Honor. Your Honor, at
23 this time, I'd like to move for a motion for judgment of
24 acquittal at the close of the Government's evidence. I ask
25 for leave to file a written motion to that. Judge, I don't

1 believe the Government's proven their evidence beyond a
2 reasonable doubt at this point, and particularly, given
3 certain motions -- I mean objections I made prior to, we ask
4 that -- that you grant our motion to dismiss for judgment of
5 acquittal.

6 THE COURT: All right. And I will note that you --
7 at sidebar, you did ask for a mistrial based on the 404(b)
8 evidence or the prior conviction evidence, and I am denying
9 that motion. With regard to your motion for acquittal, I am
10 denying that as well at this time. It's not necessary for me
11 for you to do a written motion, but if you wish to, I'm not
12 going to keep you from it --

13 MR. JIMERSON: Yes, ma'am.

14 THE COURT: -- and so -- but I am denying the motion,
15 subject, of course, to your right to reraise it at a later
16 time if necessary --

17 MR. JIMERSON: Yes, ma'am.

18 THE COURT: -- or appropriate. Okay.

19 MR. JIMERSON: Thank you, Your Honor.

20 THE COURT: All right. Now we need to talk about
21 jury instructions. I know you emailed the jury instructions
22 to us, but I asked you last night to also bring a printed copy
23 for me and defense counsel. Did you do that?

24 MR. JIMERSON: Your Honor, may I say something, too,
25 as well?

1 THE COURT: Yeah.

2 MR. JIMERSON: I don't know whether you want to get
3 into this now or a little later after Mr. Stevens answers your
4 question, but regarding my movement with my case as to what
5 Mr. Warren wants to do.

6 THE COURT: I thought I'd let you all talk about that
7 over lunch and tell me when we come back at -- have you all
8 come back about 10 minutes to 1:00.

9 MR. JIMERSON: Yes, ma'am.

10 THE COURT: And then we can discuss it then. That
11 way, you and he can talk.

12 MR. JIMERSON: Yes, ma'am. Thank you.

13 MS. BEHRENS: Your Honor, I'm sorry. I did not hear
14 the request to bring copies, so she'll make copies and bring
15 one to your chambers and give --

16 THE COURT: Well, it will be a lot faster for me to
17 just go do it myself. Why don't you stay here. I don't want
18 anybody to leave. I want to start talking about these.

19 MS. BEHRENS: Okay.

20 (Court recessed from 11:23 a.m. until 11:27 a.m.)

21 THE COURT: All right. Mr. Jimerson.

22 MR. STEVENS: Judge, would you mind if I excuse
23 myself to go upstairs? Ms. Behrens is going to handle the
24 instructions.

25 THE COURT: Yeah, I don't -- I mean, no, you can do

1 what you want.

2 MR. STEVENS: All right. Thank you.

3 THE COURT: It's your case. All right. Let's go off
4 the record. Well, let's stay on the record. Ms. Behrens, do
5 you have your instructions we can go over? Oh, you're going
6 to get your copy, too.

7 MS. BEHRENS: Well, I had a copy I sent up to have
8 copies made for Mr. Jimerson, so she was -- I didn't realize
9 you were going to make a copy. No, that's okay. We can -- do
10 you -- you don't have the copy I gave you?

11 THE COURT: Okay. Stop.

12 MS. BEHRENS: We can do it --

13 THE COURT: Just don't talk. We're on the record.
14 When you talk like that, the court reporter doesn't know if
15 you're supposed to be on the record or not. Please --

16 MS. BEHRENS: Okay.

17 THE COURT: -- don't talk to each other when we're on
18 the record. Talk to me. All right. Now, so we have a
19 package of instructions, and these, the Government has
20 modified these based on what it thinks should happen as the
21 case now stands, right?

22 MS. BEHRENS: Yes. Basically, the only
23 modifications -- we're taking all references to Mr. Washington
24 out.

25 THE COURT: Okay. Before we go through the -- the --

1 the sort of normal boilerplate and the things that you already
2 did, Mr. Jimerson, as I understand it, before trial, you filed
3 a proposed jury instruction requesting an entrapment
4 instruction, correct?

5 MR. JIMERSON: Yes, ma'am, I did.

6 THE COURT: And I know that your client -- your case
7 isn't finished yet, so we'll need to make -- I'm not going to
8 rule on this, but I'd like to hear everyone's arguments about
9 that now, and then if you need to modify them once you know,
10 you know, depending if your client does testify --

11 MR. JIMERSON: Yes, ma'am.

12 THE COURT: -- then you could add any further ones
13 you want, but tell me why you believe an entrapment
14 instruction is warranted in this case.

15 MR. JIMERSON: Well, sure, Your Honor. I believe
16 that my client has -- my client's case has been met regarding
17 the entrapment instruction. I'm just talking without looking
18 at construction itself right now. It has been met,
19 particularly, when you're talking about, you know, questions
20 were presented to the agents about whether or not he was
21 induced and, you know, whether or not Mr. Warren said he
22 didn't want to be involved with the case. We have all that,
23 Judge, and I believe in front of the Jury. This is a case
24 basically where, you know, I think you have Mr. -- Special
25 Agent Zayas, who, in my opinion, is overly aggressive. I mean

1 even though he denies it, you know, I know conduct is not a
2 part of the entrapment. Outrageous conduct is not a part of
3 it, but basically, he's overly zealous about it. He's pushing
4 people. He's pushing my client towards saying yes and no. We
5 get into all type of nomenclature about "Are you cool with
6 that? Are you hip with it?" whatever, whatever they said, but
7 I'm trying to say my client believes that he's been entrapped,
8 and if -- if necessary, you know, then he will actually take
9 the stand and -- and -- and -- and say that, Judge, but I
10 believe that we've established that at least a jury can
11 consider as to whether or not that instruction should be
12 considered in terms of -- they should deliberate on it,
13 rather, because of the inducement, the -- his opportunity to
14 get out of it, and -- and I think Special Agent Zayas
15 continually pushing, pushing, pushing, you know, and whether
16 or not we have everything that's listed on the CDs or not,
17 okay, I still believe there's sufficient information on those
18 CDs that I can argue, that I can present to the Jury that that
19 is something that they overstepped their bounds with, and I
20 believe that he's entitled to that defense, Judge, and that's
21 what I'm trying to say.

22 THE COURT: Okay. And so does the Government --
23 what's the Government's position on this request? And, again,
24 I'm not going to make any final rulings right now. I just
25 want to hear your arguments on the request.

1 MS. BEHRENS: Excuse me. May I just -- do you have
2 your proposed instruction on this?

3 MR. JIMERSON: I'll try and find it.

4 MS. BEHRENS: I'm sorry.

5 THE COURT: Yeah. It --

6 MS. BEHRENS: Unfortunately, Mr. Stevens -- I
7 apologize, Your Honor. Mr. Stevens took the instruction
8 packet with him when he went to prepare for his closing
9 argument. Just from a factual standpoint to start with,
10 though, without even getting to the instruction, Your Honor, I
11 believe the evidence was very clear from Agent Zayas'
12 testimony repeatedly that he gave Mr. Warren repeated
13 opportunities in which to back out, in which to say, "I'm
14 really not interested in this," and in fact, I think the
15 standard phrase that Agent Zayas used was, "I was escalating
16 the level of violence repeatedly through all of the different
17 factual scenarios for the purpose of making it such that we
18 didn't want a person that was going to be interested in doing
19 this that might be down on their luck," which is, I think,
20 what Agent Zayas said, and so --

21 THE COURT: Yeah, I mean this all goes to -- I
22 understand what you're saying about what he said, but really,
23 the issue of whether I give this instruction, because it is
24 normally an issue of -- it's a question of fact for the Jury
25 unless there's no -- not sufficient evidence to support it,

1 and as I understand it, the things that are important are
2 whether the government induced the conduct and whether the
3 Defendant was, you know, predisposed to commit the crime, and
4 so the instruction that the Defendant proposed is based on
5 901, and so those are the two parts of -- I'd really like to
6 hear the Government's position and argument, and I realize --
7 I'm going to give everybody a chance to argue this again, and
8 I'm not going to rule now, but I thought we could get some way
9 along the way if I knew what your position was, so -- and the
10 issues of, you know, inducement and willingness to commit the
11 crime, predisposition as we refer to it --

12 MR. STEVENS: Yes, Judge.

13 THE COURT: -- what do you believe is -- I mean I'd
14 like to hear your position on that.

15 MR. STEVENS: Yes, Judge. Thank you. Regarding the
16 first element, the inducement, Judge, the Eighth Circuit has
17 said in *United States versus Bugh* -- and I cited this to the
18 Court in my pretrial response to Mr. Jimerson's motion --
19 that's Eighth Circuit, 2012 -- that a defendant must
20 demonstrate more than the government solicit --

21 THE COURT: Slow down.

22 MR. STEVENS: I'm sorry.

23 -- soliciting, requesting, or approaching him with an
24 opportunity for illegal conduct to establish inducement, and
25 in this case, I would point out, Judge, what we have here --

1 it's interesting with this particular Defendant -- as Agent
2 Zayas testified, he didn't approach Mr. Warren. When
3 Mr. Warren showed up on June 3rd, he had no idea who he was.
4 It was Mr. Washington that introduced Mr. Warren as someone
5 who could do this home invasion robbery, and so that's how
6 Mr. Warren was introduced. That certainly goes to the second
7 element of predisposition. It also goes to the inducement in
8 that he came to Agent Zayas, and then on June 4th and 5th, he
9 came back again to Agent Zayas, and they had these
10 conversations. Agent Zayas testified that not once did he
11 ever say he didn't want to do this robbery, and what he did
12 is -- is, you know, offer him an opportunity, and, again,
13 according to the *United States versus Bugh*, "It's well settled
14 that the government use artifice, stratagem, and undercover
15 agents in pursuit of criminals," and that's what happened
16 here, and it wasn't anything beyond that, so I don't think
17 this Defendant could even show inducement in this case given
18 the circumstances of how he was introduced into this
19 undercover operation. The government did not bring him in.
20 The government talked to Robert Washington. Robert Washington
21 brought him in, and then he met with Agent Zayas on three
22 occasions, coming back each time.

23 Regarding the -- the second element, predisposition,
24 it's clear also from the case law that one way we determine
25 predisposition -- and as I already pointed out, he was

1 introduced as the person who could do this home invasion
2 robbery. There's already this case moving forward with, "Are
3 you interested in a home invasion robbery?"

4 "Yeah. Let me introduce you to the guys I know who
5 can do this."

6 And that's when Mr. Warren shows up. I think that
7 goes to predisposition.

8 Secondly, certainly, his prior convictions go to
9 predisposition as well, and in *United States versus Coleman*,
10 284 F.3d 892, Eighth Circuit, 2002, the Eighth Circuit
11 affirmed the admission of prior bad acts to show his
12 predisposition to those bad acts, and that's -- we have those
13 in this case here, and so -- and what the Eighth Circuit has
14 held is that even if a defendant can show inducement, if there
15 is evidence also of predisposition, then he's not entitled to
16 an instruction. In *United States* --

17 THE COURT: One of the questions I have to you is
18 that -- is the predisposition to do what. To possess drugs?

19 MR. STEVENS: Possess drugs as well as -- as well as
20 a firearm.

21 THE COURT: Yeah, and so you're saying the
22 predisposition is just to -- limited to the elements of the
23 crime and not to the nature of this?

24 MR. STEVENS: Well, some of the case read more
25 generally that it's simply a criminal predisposition, that

1 what the court says is --

2 THE COURT: Yeah, I guess that's what I'm getting at
3 is sort of the flip of that.

4 MR. STEVENS: Uh-huh.

5 THE COURT: It's -- if -- do you have to deal with --
6 I mean, is there an argument that, well, even though you might
7 have shown predisposition to possess narcotics, controlled
8 substances, to possess firearms, what you're -- you know, this
9 case is based on a -- the thing that was being proposed as the
10 crime was this potentially violent home invasion robbery.
11 You've said "home invasion robbery" at least 50 times during
12 the course of these two days. I'm exaggerating. You've
13 probably said it 15 times, and so do you need to -- does there
14 need to be evidence that he would be predisposed to do some
15 kind of -- this kind of a violent home invasion type robbery,
16 or is it sufficient that he, you know, might have been a guy
17 who stood on a street corner and sold a rock of crack cocaine?

18 MR. STEVENS: Well, Judge, the cases indicate that
19 when you're talking about -- when you talk about inducement as
20 well as predisposition, they talk about not wanting the
21 government to convince an unsuspecting citizen to commit a
22 crime and -- but what they also say is that it's not
23 prohibited to -- to offer an opportunity to an unsuspecting
24 criminal to commit that crime, and those cases suggest that
25 criminal predisposition of just about any generic kind is

1 sufficient. In this case, though, to take it one step
2 further, what we have from the prior convictions is
3 predisposition to do crimes very similar to the charged crimes
4 in this case, and I think under any standard that is -- that's
5 sufficient predisposition. In *United States versus Cooke*,
6 675 F.3d 1153, Eighth Circuit, 2012, the court stated -- and I
7 quote -- "The evidence shows that Cooke was predisposed to
8 commit the crime. The court did not err in refusing to give
9 the entrapment instruction." And there, the court relied in
10 part on the fact that the defendant had prior convictions.
11 And so I think -- in this case, I think it's clear that the
12 government did little more than offer an opportunity to this
13 particular Defendant who was introduced as someone who could
14 do this kind of crime and who had all these prior convictions
15 and they offered him that opportunity and that doesn't rise to
16 the level of inducement. Secondly, all of those things go
17 also to his predisposition, and if there's either one of
18 those, either a lack of inducement or predisposition, then
19 he's not entitled to a jury instruction.

20 THE COURT: All right. And any response,
21 Mr. Jimerson?

22 MR. JIMERSON: Sure. Thank you, Your Honor. Yes.
23 In fact, I believe it is important that -- that you look at
24 the -- the predisposition level. In fact, if you look at it,
25 basically, the Government's whole reliance was on violent

1 crimes. That's -- you know, and the Court, you mentioned
2 that. Basically, that was mentioned over and over again. The
3 history that were read even though we objected to it -- the
4 history that was read in the 404 had -- had -- doesn't say
5 anything regarding that in terms of his propensity to commit
6 robberies or use assault weapons or anything of that nature,
7 and I believe that to -- to take that and just stretch it
8 broadly, as the Government wants to do, if you were driving on
9 license suspended and get a felony charge out of it, if it's
10 on that level, then you're a predisposed person. I don't
11 believe it's that sweeping, and I believe that the language is
12 limited to predisposition to commit these types of crimes, and
13 I believe that that's the thing, but, Judge, factually, you
14 heard and one of the arguments that the Government had was,
15 well, he wasn't approached. Well, in fact, he was. In fact,
16 this Officer Zayas, Special Agent Zayas, kept talking about
17 his girlfriend got to move, "We've got to do these things.
18 Come on, man. Let's do this thing," whatever. Now you're
19 talking --

20 THE COURT: So you're arguing that even though it was
21 Mr. Washington who initially brought him to Mr. Zayas that he
22 could still show inducement because of the things he said to
23 him?

24 MR. JIMERSON: Yes. And, in fact, you know,
25 inducement doesn't have to -- and I don't have a case to say

1 that, but inducement doesn't have to necessarily be the
2 initial thing. In fact, Washington was the initial person,
3 but -- but the government then took over. In fact, you heard
4 Special Agent Zayas say that, "I took control of this." You
5 know, these -- these confidential informants, they've sold
6 Mr. Washington some cocaine, and now, all of a sudden, after
7 that, he said, "I took it from that point because I was
8 looking at" -- so the inducement actually did come from --
9 Mr. Warren's inducement came from Detective Zayas because he
10 said to him, you know, he mentioned, and if you listen back to
11 the tapes, "I'm going to get half the dope. I'm going to do
12 this and that. You're going to give half to my CIs,"
13 whatever, and so I think there was something there that he's
14 pushing Mr. Warren into doing, Judge, so I don't think it's as
15 clear-cut as the Government is trying to make, so there's no
16 inducement. I believe clearly the facts support that, and if
17 the facts support that, I believe it's a factual issue for the
18 Jury to determine that, Judge, in terms of whether there was
19 inducement then from that standpoint. Your Honor, I believe
20 there's sufficient information there, you know, and you have
21 instruction there, and I just talked about number one and two,
22 whether or not he's going to do this on his own, I mean, so
23 without that, and you've heard that basically without this,
24 nothing was going to happen. In fact, his history shows
25 nothing has happened like that. Okay. Other than the fact he

1 has these priors that was mentioned in the 404(b), 404
2 information, but nothing has happened like that to say he
3 would have done this on his own. We don't have that proof,
4 and the Government's trying to take a giant leap here to
5 achieve that, and I believe they can't, Judge. Thank you.

6 THE COURT: All right. Well, I'm going to continue
7 to take this under submission until we've finished all the
8 evidence in the case. I just wanted to hear what the parties
9 had to say on these basic issues. Now, on the -- do you all
10 know as you sit here now -- oh, there was also -- are you
11 still requesting a withdrawal instruction, or do you expect
12 to?

13 MR. JIMERSON: Judge, I expect to submit it, but I
14 expect --

15 THE COURT: Right. So I'll tell you now I won't give
16 the withdrawal instruction because I believe the law is clear
17 that if it's -- this instruction is not appropriate unless
18 it's a conspiracy that involves -- that requires overt acts,
19 and even if -- even if it -- I mean there were overt acts
20 committed in this case even though this statute doesn't
21 require them, and I also don't think there's a -- I don't
22 think the evidence would support it, so I'll just tell you
23 right now that's my definitive ruling on that.

24 MR. JIMERSON: Yes, ma'am.

25 THE COURT: I'll mark the one you submitted as

1 offered by Defendant and refused and put it in the court file.

2 MR. JIMERSON: Yes, ma'am.

3 THE COURT: What other areas of controversy do we
4 have? I mean a lot of it is just checking the form
5 instructions for the rest of it and making sure they're
6 appropriate. Do you know of any other major issues?

7 MS. BEHRENS: I'm not aware of any, Your Honor, no.

8 MR. JIMERSON: No, ma'am.

9 THE COURT: Okay. Mr. Jimerson, you'll have -- I'm
10 going to take a recess. I'd like you all to be back here at
11 10 'til 1:00, since I told the Jury to be back at 1:00. At
12 that time, I'll ask the Defendant to tell me about his
13 decision whether to testify. I also will -- if he -- if the
14 decision is that he won't testify, we'll try to wrap things up
15 and get this to the Jury very quickly after that. And we will
16 have -- again, I'll expect it will be the 20-minute
17 presumption. You all can give the clerk your -- how much
18 warnings you want.

19 MR. STEVENS: I'm sorry. I didn't mean to interrupt.

20 THE COURT: Yeah. Go ahead.

21 MR. STEVENS: I would -- I'd request 30 minutes if I
22 could. I know that this case has moved pretty quickly, but
23 we've got a conspiracy count here, a lot of elements, and I
24 would just ask for 30 minutes to argue, just 10 additional
25 minutes, just to give me sufficient time to be able to deal

1 with the elements of the conspiracy. There's a long
2 instruction regarding that, and I'd like to be able to do some
3 explanation of that to the Jury as I go through my -- go
4 through my evidence.

5 THE COURT: I'll -- I'll take that under
6 consideration, too, but probably you're only going to get 20.

7 MR. STEVENS: All right.

8 THE COURT: Okay. So, you know, I'll think about it,
9 but I don't -- I don't know. This case took less than a day
10 to get all the evidence in, so I'm not sure that it requires a
11 long argument, but I will -- I will think about that. Okay.
12 What I'd like you to do -- both counsel -- is look over these
13 instructions. I don't suppose the Government could prepare me
14 a clean copy without that tail on the end?

15 MS. BEHRENS: Oh, absolutely, Your Honor.

16 THE COURT: Okay. Can you email that to me before 10
17 minutes 'til 1:00?

18 MS. BEHRENS: Yes, Your Honor.

19 THE COURT: And bring clean copies for everybody.

20 MS. BEHRENS: I can do that as well.

21 THE COURT: And then we can -- well, I tell you
22 what -- never mind. You don't have -- get one prepared and
23 email it to me. I don't know if we'll use it or not.

24 MS. BEHRENS: All right.

25 MR. JIMERSON: I've got a clean copy if you need it

1 as well, Judge.

2 THE COURT: Okay. And yours are short, so I can --
3 that's easy, too. Yeah, if you have a clean copy, we could
4 put that in, in theirs.

5 So here's the thing. Mr. Warren, we're taking a
6 break right now. You have a constitutional right to testify
7 in this case. You also have a constitutional right not to
8 testify. If you decide not to testify, I will, if you want me
9 to, tell the Jury that they cannot even consider that in any
10 way or discuss it in any way, and that is the law that the
11 Jury cannot consider it and the prosecutor cannot argue it;
12 however, you also have the right to testify. This is the one
13 decision -- well, there are two. One is whether you're going
14 to plead guilty or not, and the other one is whether you're
15 going to testify once you have pleaded not guilty, but this is
16 a decision that you -- is personal to you, for you to make.
17 You need to talk to your lawyer, take his -- you know, listen
18 to his legal advice, but the ultimate decision whether to
19 testify is entirely up to you. He can't keep you from
20 testifying if you want to do that, and so when we come back at
21 10 'til 1:00, I'm going to ask what the decision is, and we'll
22 make a record of that.

23 MR. JIMERSON: Yes, ma'am.

24 THE COURT: Okay. So court's in -- anything else I
25 need to know right now?

1 MR. JIMERSON: No, ma'am.

2 THE COURT: Okay. Court's in recess until 10 'til
3 1:00.

4 (Court recessed for lunch from 11:46a.m. until 12:49p.m.)

5 (The following proceedings were held outside the hearing
6 and presence of the Jury.)

7 THE COURT: All right. Are we ready to resume,
8 Mr. Jimerson?

9 MR. JIMERSON: We are, Your Honor.

10 THE COURT: Okay. Are you going to present evidence?

11 MR. JIMERSON: No, we're not. Mr. Warren has
12 indicated he does not wish to testify.

13 THE COURT: All right. Mr. Warren, your lawyer has
14 indicated you're exercising your right not to testify in this
15 case and that you do not want to testify, is that correct?

16 THE DEFENDANT: Yes, ma'am.

17 THE COURT: And you understand it's your right to do
18 so if you want to?

19 THE DEFENDANT: Yes, ma'am.

20 THE COURT: And -- yeah. And you're giving up that
21 right and agreeing not to testify?

22 THE DEFENDANT: Yes, ma'am.

23 THE COURT: All right. Thank you.

24 Any further record you wish to make?

25 MR. JIMERSON: No, Your Honor, not in regard to

1 that --

2 THE COURT: Okay.

3 MR. JIMERSON: -- but I guess Mr. Stevens is going to
4 make an announcement at this point.

5 THE COURT: Okay.

6 MR. STEVENS: That I am?

7 MR. JIMERSON: No. Okay. I'm sorry. At this point,
8 I'd like to make a motion for judgment of the -- judgment of
9 acquittal at the close of all the evidence, Judge.

10 THE COURT: Okay.

11 MR. JIMERSON: On the same grounds I spoke about
12 earlier.

13 THE COURT: All right. And I will deny that on the
14 same grounds. I don't think there's been any showing that the
15 government committed entrapment as a matter of law or that
16 they failed to make a submissible case, and so I will deny the
17 motion for judgment as a matter of law.

18 MR. JIMERSON: Yes, ma'am.

19 THE COURT: I will tell you I am troubled by the
20 government conduct in this case, as I think everybody is who
21 hears about this, because it is such a -- it's unusual in our
22 district. Certainly, we've had a lot of undercover
23 operations, a lot of things of this nature, you know,
24 different types of things where someone asks someone to sell
25 them drugs, et cetera. There's two aspects of this that

1 bother me. The first one is just the sort of obvious one that
2 everybody would have when they hear about this case, that
3 there's -- that it was just made up out of whole cloth, that
4 there were no drugs, there were no drug dealers, there was no
5 stash house, and that it's -- you know, that's a -- that's the
6 first thing that sort of is a visceral reaction, and I'm --
7 I'm not sure legally it makes a difference.

8 The other thing is on the entrapment I haven't found
9 many entrapment cases that deal with an entrapment to
10 conspire. There wasn't actually a crime finished here. The
11 only crime was the conspiracy. In most of the entrapment
12 cases, someone really did go forward with a completed crime, a
13 choate crime, if you will, not an inchoate crime like
14 conspiracy, so it's a little unusual, and that is troubling,
15 but I'll hear more arguments about the entrapment. Actually,
16 before we do that, I'd like to talk about all the
17 instructions, and my first question to the Government is, are
18 you withdrawing your request for a mandatory minimum on Count
19 I and the finding of drug quantity because there's nothing in
20 your instructions that reflects that?

21 MR. STEVENS: The -- the five-kilogram quantity?

22 THE COURT: Yeah.

23 MR. STEVENS: That should be reflected in --

24 MS. BEHRENS: It wasn't in the original.

25 MR. STEVENS: Oh, I'm -- it should be, Judge, as

1 count -- as element four of that, that the -- in excess of
2 five kilograms of cocaine.

3 THE COURT: Well, that was my question.

4 MR. STEVENS: Yes.

5 THE COURT: The instructions didn't contain that, and
6 I do -- the ones you proposed, but I mean that's fine if
7 that's what -- I mean I think you've submitted sufficient
8 evidence to submit on that. Let me then ask you how you think
9 it should be submitted because, as you know, there's a couple
10 of different ways it can be done. In the *Shepherd* case, which
11 was actually my case, the Eighth Circuit suggested it was
12 harmless error to submit as a special interrogatory, but in
13 later cases, they've sort of ignored that case. In our
14 district, we seem to think it's important. I thought they
15 were wrong at the time and still do. I think it should go on
16 special interrogatories. It's easier for the jury to
17 understand, but I don't want -- I'm not going to force that if
18 anybody thinks it should go the other way, where you go
19 through all the lesser included stuff.

20 MR. STEVENS: Well, Judge, I would just ask that it
21 be the fourth element of the crime.

22 THE COURT: Okay. And then that way, if they don't
23 find the "more than five kilograms", then he would be not
24 guilty.

25 MR. STEVENS: That's right.

1 THE COURT: Okay. So we'll just add it as a fourth
2 element of the crime. So there's no lesser included things to
3 worry about?

4 MR. STEVENS: Yes.

5 THE COURT: Okay. That's easy to add.

6 All right. Then let's go through. Well, let's talk
7 about the Defendant's requested entrapment instruction. I --
8 you know, in looking at all these cases, you know, so many
9 cases say that this is a question of fact for the jury,
10 although there are some cases where they've said that it
11 should not have been submitted or didn't have to be, it wasn't
12 error not to submit it, and those deal with the element of
13 inducement. I understand the arguments here that -- from the
14 Government's point of view -- that he was not brought to the
15 deal initially by the government agent but, rather, by
16 Mr. Washington, but there's no evidence before the Jury about
17 what Mr. Washington did to bring him there, is there?

18 MR. STEVENS: No, Judge, just that he introduced him
19 as an individual who could do this home invasion robbery.

20 THE COURT: Well, what did he say that said, "This is
21 somebody who can do the home invasion robbery"?

22 MR. STEVENS: Well, they had previously met and had a
23 conversation regarding that, and then when Daryl Warren shows
24 up there on the lot, as Agent Zayas testified, he --
25 basically, there's a discussion about, "Are these the guys?"

1 Yes, these are the guys." You know, those are the guys that
2 he had told him about who could do the home invasion robbery,
3 and what he testified to is that they were introduced as those
4 people.

5 THE COURT: Yeah, I guess -- I guess I don't know --
6 you know, we don't know if -- there's no evidence that would
7 say that Mr. Washington didn't bring him there saying
8 something else, you know, "We're going to meet some guy who's
9 going to sell me a car" or "Let's go sit in his car and talk
10 about it," and then all of a sudden, the agent starts talking
11 about all this other stuff. I mean, is there any evidence --
12 we don't know what went on between Washington and Warren, do
13 we?

14 MR. STEVENS: Well, we -- when they first get in the
15 Cadillac and start discussing it, as we played on that tape,
16 they first get in the Cadillac, and Agent Zayas turns to
17 Mr. Warren and Mr. Twitty and says, "He's already, you know,
18 explained this to you," and then he goes on and goes through
19 it in more detail, and again, he's testified that they were
20 introduced as the people who could do this home invasion
21 robbery.

22 THE COURT: Well, but I mean with Mr. Warren sitting
23 there, at least on the tapes I saw, I didn't hear
24 Mr. Washington saying, "Here's the guy who can do this home
25 invasion robbery."

1 MR. STEVENS: No. That's right.

2 THE COURT: He said, "Here's the guys" or something
3 like that.

4 MR. STEVENS: Yes. But he -- when -- when -- as soon
5 as Agent Zayas launches into then the issues with the home
6 invasion robbery, I mean, there's no -- you know, there's no
7 indication by anybody about "What are you talking about?" or
8 "We don't know what you mean" or any of that kind of thing.
9 Instead, the response, as I've argued, is, "You know, well,
10 how many -- how many dudes are in the house? Where's the area
11 at?" They get into the discussion about the trap car.

12 THE COURT: On the very first day, was there any -- I
13 mean, there was not a lot of discussion about that stuff,
14 right?

15 MR. STEVENS: No. On June 3rd, the first meeting in
16 which Mr. Warren attended, that was most of the discussion.

17 THE COURT: They didn't talk about a trap car.

18 MR. STEVENS: On that day, they did, yes.

19 THE COURT: They did?

20 MR. STEVENS: Yes.

21 THE COURT: A trap car?

22 MR. STEVENS: Agent Zayas offered them a trap car.
23 Mr. Twitty said, "No, we've got a car," but then Daryl Warren
24 said, "Well, it's got a trap in it?" And he said, "Yeah, it's
25 got a trap. I can show it to you."

1 THE COURT: And that was the first conversation on
2 the 3rd?

3 MR. STEVENS: Yes, exactly.

4 THE COURT: Okay.

5 MR. STEVENS: That first conversation, Judge, from
6 the get-go, they get into the car, and he asks if Washington
7 has told them about this and then says, "Okay. Well, here's
8 the situation."

9 THE COURT: But does Warren say, "Yes"? He doesn't
10 say anything, does he?

11 MR. JIMERSON: He doesn't say anything.

12 MR. STEVENS: I don't recall.

13 THE COURT: Okay.

14 MR. STEVENS: I don't recall him saying anything, but
15 he then -- I mean that first meeting, those first two minutes
16 in the car, Agent Zayas launches immediately into the scenario
17 and goes entirely through it.

18 THE COURT: Okay.

19 MR. JIMERSON: Well, Judge, we can't guess as to what
20 Mr. Washington said, and -- and -- but based on what we heard,
21 nothing was said, I mean, other than Mr. Warren is there.
22 He's there, but Mr. Stevens wants to argue, you know, that,
23 basically, well, he must have said something because you're
24 sitting here now and, therefore, you must have understood
25 everything, and I think we just can't take that leap.

1 MR. STEVENS: Judge, I think you have an interesting
2 point about the conspiracy, and I understand your concern
3 regarding that, but I would also point out that that kind of
4 cuts both ways in that, you know, inducement to commit a
5 conspiracy -- obviously, a charged conspiracy can't be between
6 Agent Zayas and the Defendant. It's the Defendant and the
7 other individuals, and, you know, it's -- it's -- I don't know
8 how we could establish inducement for him to conspire with
9 these other individuals or for them to conspire with him.

10 THE COURT: Is it your position that -- and I know
11 we've talked about the withdrawal instruction. Is it your
12 position that after the first meeting the crime was already
13 completed, he couldn't -- he couldn't have withdrawn after
14 that first meeting, having that first conversation was
15 sufficient?

16 MR. STEVENS: Yeah, the -- the -- I mean the
17 agreement is made at that time, yes, and then the -- they
18 continue to come back each time. So, yeah, after that first
19 meeting, as soon as there's an agreement, the conspiracy is --
20 is committed, and there is --

21 THE COURT: So nobody can ever back out of a drug
22 conspiracy? If somebody says, "Will you sell me some drugs?"
23 And you say, "Yeah," and then you call them back and say, "No,
24 I'm not," it doesn't matter; you're done?

25 MR. STEVENS: That's the law. It's the -- it's the

1 agreement. Now, as a practical matter, would we bring that
2 case?

3 THE COURT: Yeah, but that's -- that's not -- I mean
4 legally is the question.

5 MR. STEVENS: Yeah.

6 THE COURT: Have you seen any cases like that?

7 MR. STEVENS: No, but -- I have not, but, you know, I
8 read the cases that are listed in the -- in the notes to the
9 instructions regarding the withdrawal, and it's very clear in
10 an 846 conspiracy you're not -- we're not required to prove
11 any overt acts at all and that you don't get the withdrawal
12 instruction for that reason. There cannot be a withdrawal
13 from the agreement. Either you entered the agreement or you
14 did not.

15 THE COURT: You know, this is a really close case,
16 and I'm trying to separate out the -- you know, to look at the
17 inducement and what -- I'll tell you what. I'm going to
18 submit it to the Jury on the entrapment, and the reason is
19 the -- there are so many cases that say it is a jury question,
20 and the Defendant does have an initial -- have to show there's
21 something that would show inducement, but I think the
22 Government's own evidence does show that and that a jury could
23 find inducement. So I guess I'm going to do it. I am really
24 not sure about this. I have to tell you that.

25 MR. STEVENS: If that is the case, Judge, could I

1 have that additional 10 minutes to argue?

2 THE COURT: Yeah.

3 MR. STEVENS: Now I have to prove beyond a reasonable
4 doubt the lack of entrapment.

5 THE COURT: Yeah, I will give you 30 minutes to
6 argue.

7 MR. STEVENS: Thank you.

8 THE COURT: The -- and this is only a -- is this --
9 this is only a defense to Count I, but then it would also be a
10 defense to Count II, of course, because Count II depends on
11 Count I, but it doesn't apply at all to Count III?

12 MR. JIMERSON: No, not to Count III. There's a
13 different argument for Count III, but you're talking about a
14 felon in possession of a weapon?

15 THE COURT: Right.

16 MR. JIMERSON: Okay. That's a different argument for
17 that, but Counts I and II, that's what it applies to.

18 THE COURT: The instruction that the Defendant
19 proposed for the entrapment, do you all have that in front of
20 you?

21 MR. JIMERSON: Yes, ma'am.

22 THE COURT: Okay. Can you show it to defense
23 counsel -- I mean the Government counsel?

24 MR. JIMERSON: Sure.

25 THE COURT: Now, so, first of all, Mr. Jimerson, is

1 this the instruction that you think should be used?

2 MR. JIMERSON: I think so, Your Honor, but I think
3 you just brought up a matter regarding the entrapment.

4 MR. STEVENS: All three.

5 MR. JIMERSON: Yeah, all three of them are included
6 in there, so I think we need to take out the felon in
7 possession of a weapon count regarding the entrapment.

8 THE COURT: I think -- okay. So I'm going to -- I
9 think it should say, "One of the issues in this" -- and this
10 is straight out of the Eighth Circuit Pattern Instructions,
11 right?

12 MR. JIMERSON: Yes, ma'am.

13 THE COURT: So what if I say, "One of the issues in
14 this case is whether the Defendant was" or maybe "One of the
15 issues in this case with regard to Counts I and II" --

16 MR. JIMERSON: That's fine, Your Honor.

17 THE COURT: -- "is whether the Defendant was
18 entrapped," and then each time it refers to the felon in
19 possession of a weapon, I take that out, so it would be -- the
20 next -- so it would read, "The Government has the burden of
21 proving beyond a reasonable doubt that the Defendant was not
22 entrapped by showing either, one, the Defendant was willing to
23 commit the conspiracy to distribute" -- isn't it "possess with
24 intent to distribute"?

25 MR. JIMERSON: I kind of read it off the indictment,

1 I thought.

2 THE COURT: Or is it both?

3 MR. STEVENS: Yeah, we had both of those in the
4 indictment, Judge. I've just elected for "possess with intent
5 to distribute."

6 THE COURT: Okay. So "Defendant was willing to
7 commit the conspiracy to possess with intent to distribute
8 cocaine and possess -- and to -- and to commit the crime
9 of" -- because the second -- Count II is not conspiracy.

10 MR. STEVENS: No. That's -- Count II would be
11 possession of a firearm in furtherance of a drug trafficking
12 crime.

13 THE COURT: "And the Defendant was willing to commit
14 the conspiracy to possess with intent to distribute cocaine
15 and to commit the crime of possession of a firearm in
16 furtherance of a drug trafficking crime before he was
17 approached or contacted by law enforcement agents," et cetera,
18 and then make the same change, so "did not -- someone acting
19 for the government did not persuade or talk the Defendant into
20 committing conspiracy to distribute cocaine or possession of a
21 firearm in furtherance." Or "and"? Whatever. Should that be
22 "or" or "and"? You said "and" earlier.

23 MR. JIMERSON: I think it's "or", isn't it? Yeah,
24 it's "or".

25 THE COURT: Okay. So I'll make those changes. Let's

1 go through the rest of the -- and I'll insert that. You'll
2 need to tell me where you think it should go, but let's look
3 at the other instructions that have been provided. The first
4 group -- I just want to go through them one at a time.
5 Instructions 1, 2, and 3 are just boilerplate, and those
6 are -- are there any objections to those on the third page?

7 MR. JIMERSON: No, Your Honor.

8 THE COURT: Okay. The fourth page -- and I know you
9 all don't necessarily have page numbers on these, but the next
10 one is "In deciding what the facts are." It has a tail that
11 says, "You should judge the testimony of a defendant." Do you
12 see that one?

13 MS. BEHRENS: And since he's not testifying --

14 THE COURT: Since he didn't testify, I'll take that
15 out.

16 MR. JIMERSON: Right, right. Okay.

17 THE COURT: And then the next one is the stipulation
18 one, and it says, "The Government and Defendant Daryl Warren
19 have stipulated." Do you all have these in the same order
20 I've got them?

21 MS. BEHRENS: I'm going to give him exactly -- yeah,
22 I'm going to give him the copy you have so he can see it in
23 the same order, Judge.

24 MR. JIMERSON: Okay.

25 THE COURT: Yeah, because it's -- this instruction,

1 which is the fifth one listed, says, "The Government and
2 Defendant Daryl Warren have stipulated, that is they have
3 agreed, that certain facts" -- and I changed it to say "are as
4 counsel stated to you" because it wasn't really correct the
5 way you had it. It said "as they've just stated" and they
6 hadn't just stated it, right? What was your proposal? Would
7 you put yours on the ELMO, so I can see it?

8 MS. BEHRENS: Yes. This is what the amended package
9 was that I sent you, Judge.

10 THE COURT: "Are as counsel have stated." Yeah, is
11 that -- I mean, do you -- is that the better language -- "are
12 as counsel have stated"?

13 MS. BEHRENS: I think so at this point, yes.

14 MR. JIMERSON: No objection, Judge.

15 THE COURT: Okay. Okay. That's how we'll do it, and
16 the next one is the expert witness, "Persons described as
17 experts"; any objection to that?

18 MR. JIMERSON: That's fine. That's fine.

19 THE COURT: All right. That will become Instruction
20 #6.

21 MS. BEHRENS: The next instruction, Your Honor,
22 should be omitted.

23 THE COURT: Yeah, I was going to say I hadn't heard
24 any evidence about statements.

25 MS. BEHRENS: I'm sorry to interrupt. It was there

1 just in case the Defendant testified and it become an issue.

2 THE COURT: Okay. Instruction 7 is the 404(b)
3 instruction, and given that we are -- I am going to instruct
4 on entrapment, this does have the entrapment language in it.

5 MS. BEHRENS: Yes, Your Honor.

6 THE COURT: And so this is how the Government thinks
7 it should be?

8 MS. BEHRENS: I believe so, Your Honor. I think it
9 needs to be separate and apart. I think the law is clear that
10 we are allowed an instruction on criminal predisposition with
11 respect to the prior convictions.

12 THE COURT: And so is this the right way to do it?

13 MS. BEHRENS: As far as I can tell, Your Honor, from
14 the cases I've reviewed.

15 THE COURT: Okay. And then the next one says, "The
16 indictment" -- it leads in, "The indictment in this case
17 charges the Defendant with three different crimes," and I --
18 "Count I charges the Defendant with the crime of conspiracy
19 with -- to possess with intent to distribute," and I'll change
20 that to be --

21 MS. BEHRENS: No, that's correct.

22 THE COURT: Well, what about the quantity?

23 MS. BEHRENS: Oh, correct, Your Honor, "over five
24 kilograms -- with intent to distribute over five kilograms of
25 cocaine"?

1 THE COURT: Yeah. Yeah, "in excess of five kilograms
2 of cocaine," and then the others are the same as are listed in
3 the Government's draft, and then at the -- at the -- at the
4 bottom of that page, that instruction does have a tail on it
5 that is -- says, "There is no burden upon the Defendant to
6 prove that -- that he is innocent. Instead the burden of
7 proof remains on the Government throughout the trial. The
8 fact that a defendant did not testify must not be considered
9 by you in any way or even discussed in arriving at your
10 verdict." And the way these usually work is that we can
11 give -- it's -- it's the Defendant's option, and we could
12 include the first two sentences alone or all three sentences,
13 and so, Mr. Jimerson, what do you want?

14 MR. JIMERSON: Your Honor, I believe all three would
15 be appropriate for Mr. Warren.

16 THE COURT: Okay.

17 MR. JIMERSON: All three sentences would be
18 appropriate for Mr. Warren.

19 THE COURT: All three sentences?

20 MR. JIMERSON: Yes, ma'am.

21 THE COURT: Okay. That's fine.

22 All right. And then the next instruction is the
23 reasonable doubt instruction. Any objection to that?

24 MR. JIMERSON: No objection.

25 THE COURT: Okay. And then the next instruction is

1 the indictment, and it does include "possess with intent to
2 distribute in excess of five kilograms of a mixture or
3 substance containing a detectable amount of cocaine." So is
4 there any objection to that instruction?

5 MR. JIMERSON: No, ma'am.

6 THE COURT: All right. The next instruction lists
7 the federal statutes and including conspiracy, and it's just
8 the -- it's just the language of the statutes. Any objection
9 to that?

10 MR. JIMERSON: No objection, Judge.

11 THE COURT: All right. And then the next one is "The
12 indictment charges the offenses were committed on or about a
13 certain date." Any objection to that one?

14 MR. JIMERSON: No, ma'am.

15 THE COURT: Okay. The next one is the conspiracy
16 instruction, and --

17 MS. BEHRENS: That first element --

18 MR. JIMERSON: I think the first element needs to be
19 amended.

20 THE COURT: Yeah.

21 MS. BEHRENS: Well, no, actually, not the first
22 element. We were going to put that as a fourth element, Your
23 Honor.

24 THE COURT: Well, you know, that's -- yeah, you tell
25 me how it should be on a conspiracy charge.

1 MS. BEHRENS: I believe it's a fourth element.

2 THE COURT: Okay. Here's -- hold on a second. Yeah,
3 so it will be the fourth -- well, this is the possession with
4 intent to distribute as opposed to the conspiracy, or at least
5 that's the one I have. Let me take a look.

6 MS. BEHRENS: I believe it's probably one in the
7 same.

8 THE COURT: I think it is, too. Yep. So it would
9 be -- so we would add a fourth element, and it would say,
10 "Four, the agreement or understanding involved five kilograms
11 or more of a mixture or substance containing cocaine"?

12 MR. JIMERSON: Yes, ma'am.

13 MS. BEHRENS: Yes, please.

14 THE COURT: When you flip back to the indictment --

15 MS. BEHRENS: Uh-huh.

16 THE COURT: -- it doesn't say "five kilograms or
17 more"; it says "in excess of five kilograms," so should I
18 change that to be "in excess of five kilograms"?

19 MS. BEHRENS: For consistency, Your Honor --

20 THE COURT: Okay.

21 MS. BEHRENS: -- to avoid confusion, that's -- I'm
22 not --

23 THE COURT: Yeah, I'll just put "in ex" -- I think
24 that's -- I mean I think, I guess, in the indictment the
25 Government took on an additional burden that it didn't have,

1 right? I think that's what you did.

2 MS. BEHRENS: I came into this case late, Your Honor.

3 THE COURT: Not your -- not your fault?

4 MS. BEHRENS: I'm not making any representations at
5 this point.

6 MR. JIMERSON: Okay.

7 THE COURT: So it will read, "Fourth or four, the
8 agreement or understanding involved in excess of five
9 kilograms of a mixture or substance containing cocaine," and
10 then I'm -- the instructions say then list the instruction
11 number of next ones that are going to explain the elements,
12 and I just said, "The following instructions further explain
13 these elements" because I always forget to read the
14 instruction numbers and it's easier this way.

15 So that's -- so then the next couple of pages of the
16 Government's submission -- oh, well, no, wait. We've got to
17 add entrapment to this.

18 MS. BEHRENS: Yes.

19 THE COURT: So where does entrapment go?

20 MS. BEHRENS: Well, I think entrapment, Your Honor,
21 would go after Counts I and II, the instructions.

22 MR. JIMERSON: Where are you?

23 THE COURT: Well, actually, the entrapment
24 instruction in the Pattern Instruction says we need to modify
25 the verdict director to say -- what you're supposed to do is

1 say something like -- yeah, I need to say -- when it says, "If
2 you find" -- it should say, "If you find these four elements
3 have been proved beyond a reasonable doubt" -- I don't think
4 we need to say "as to the Defendant" because he's the only one
5 here.

6 MR. JIMERSON: Yes, ma'am.

7 THE COURT: "And if you find unanimously and
8 beyond" -- yeah, here's -- here's what the Pattern says in the
9 2013 version, and I'm adding in the entrapment stuff. "If you
10 find these four elements unanimously and beyond a reasonable
11 doubt and if you find unanimously and beyond a reasonable
12 doubt that the Defendant was not entrapped as defined in
13 Instruction blank," which I will have to put the number in,
14 "then you must find the Defendant guilty of the crime charged
15 in Count I," and so that is -- is that language acceptable to
16 the Government?

17 MS. BEHRENS: Yes.

18 THE COURT: Okay. All right. And then should we --
19 then the elements -- the descriptions of the -- well, how
20 should we modify the others because now we've got four
21 elements and we only --

22 MS. BEHRENS: Well, I'm not sure -- well, hmm? I'm
23 not entirely sure, Your Honor, that an explanation needs to be
24 given to the fourth because that's a fairly concrete --

25 MR. JIMERSON: Well --

1 MS. BEHRENS: You disagree?

2 MR. JIMERSON: Yeah, yeah.

3 MS. BEHRENS: I'm sorry. I didn't mean to talk
4 directly to you.

5 THE COURT: Okay. Hold on a second. Let's take -- I
6 need to -- I did not grab that instruction out of the new
7 Pattern. Let me see if I can pull it up quickly.

8 MS. BEHRENS: I have an extra copy here.

9 THE COURT: Do you have it of the -- do you have the
10 846 of the 2013 Pattern? Go ahead and just -- you can put it
11 on the ELMO, and that way you can show it to defense counsel
12 at the same time.

13 MS. BEHRENS: He has a copy as well.

14 THE COURT: Okay. Show me. Show me what it says
15 with regard to --

16 MS. BEHRENS: Now you're asking for, Your Honor, the
17 one that explains?

18 THE COURT: Yeah. And what I'm really asking for is
19 on the -- the actual -- no, I want the one before that.

20 MS. BEHRENS: Okay.

21 THE COURT: And there's not one on -- yeah -- no. I
22 actually meant the -- I wanted the book. I didn't want what
23 you proposed.

24 MS. BEHRENS: Oh, I don't have the book. I'm sorry.

25 THE COURT: Well, it's not in a book. It's online.

1 Hold on just a second. Let me see if I can pull it up.

2 MS. BEHRENS: I misunderstood.

3 THE COURT: I ought to be able to. Almost there.

4 Sorry. This is taking me longer than I thought. I'm pulling
5 this up now, and it's probably not going to help me out, but
6 let me see if it does. Okay. Hold on just a second. I'll be
7 right back.

8 MR. JIMERSON: Yes, ma'am.

9 (Court recessed from 1:21 p.m. until 1:24 p.m.)

10 THE COURT: Okay. I'm sorry I didn't notice this
11 before. The Government, in its proposed conspiracy
12 instructions, used the conspiracy instructions for a 371, 18
13 U.S.C. § 371 conspiracy, and not for a drug conspiracy. If
14 we're basing it on the Pattern, I mean, I don't think it's
15 substantively wrong actually, but there are -- if you'll look
16 at your proposal, it's based on 5.06 something or other.

17 MS. BEHRENS: Okay. 5.06A-1.

18 THE COURT: Okay. And the ones dealing with 846
19 conspiracies are based -- found in the Pattern Instructions at
20 6.21.846A, and then it doesn't include all that explanation
21 about the elements.

22 MS. BEHRENS: Okay.

23 THE COURT: So is there any -- let me show you what
24 it is. It's the same as in the previous book.

25 MR. JIMERSON: It might be easier. Yeah. Thank you.

1 THE COURT: I mean if you want to see what the 5.06
2 says, you can flip to that one and you'll see it, the
3 difference. This one doesn't start out with "It's a crime for
4 two or more people to agree." It just starts out with the
5 elements. 5.06A-1, I think, was the one you were using. And,
6 again, that's the --

7 MS. BEHRENS: Well, yeah, because 5.0 --

8 THE COURT: Which one do you think is correct,
9 Ms. Behrens?

10 MS. BEHRENS: Well, 5.06 has overt acts in the
11 instruction.

12 THE COURT: Yeah.

13 MS. BEHRENS: A-1. I'm sorry. I'm looking at A.

14 THE COURT: Okay. Let's go off the record for a
15 second.

16 (Off record discussion.)

17 THE COURT: Okay. Let's quickly go back on the
18 record then, and I think we can do this.

19 THE CLERK: Judge, the Defendant just stepped out.

20 THE COURT: I'm sorry? Oh, the Defendant's gone.
21 It's okay. This is legal, so it's all right, but thank you
22 for telling me.

23 (Defendant reenters courtroom.)

24 THE COURT: Now he's back, yeah.

25 Okay. So we are on the instruction involving the

1 conspiracy verdict directing instructions, and the issue was
2 that the one submitted by the Government was based on a
3 Pattern for a different conspiracy statute, and we think the
4 one we should do is based on the Pattern Instruction
5 6.21.846A.1, and so what it will read would be "The crime of
6 conspiracy as charged in Count I of the indictment has four
7 elements, which are, one, on or before June 5th, 2013, two or
8 more people reached an agreement to commit the crime of
9 possession with intent to distribute in excess of five
10 kilograms of a mixture or substance -- of" --

11 MS. BEHRENS: Does it have the quantity in this one?

12 THE COURT: No, it doesn't. Just say -- yeah, in --
13 yeah, that's right. So that would say, "One, on or before" --
14 you're right -- "on or before June 5th, two or more people
15 reached an agreement to commit the crime of possession with
16 intent to distribute cocaine; two, the Defendant voluntarily
17 and intentionally joined in the agreement either at the time
18 it was first reached or at some later time while it was still
19 in effect; three, at the time the Defendant joined in the
20 agreement the Defendant knew the purpose of the agreement;
21 and, four, the agreement or understanding involved in excess
22 of five kilograms of a mixture or substance containing
23 cocaine."

24 And then it would say, "If you find these four
25 elements unanimously and beyond a reasonable doubt and if you

1 find unanimously and beyond a reasonable doubt that the
2 Defendant was not entrapped as defined in Instruction Number
3 blank, then you must find the Defendant guilty of the crime
4 charged in Count I. Otherwise, you must find the Defendant
5 not guilty of the crime charged in Count I."

6 And then we will follow that with the instruction
7 based on Pattern Instruction 5.06B, which explains
8 conspiracies and includes the -- it says, "The Government must
9 prove that the Defendant reached an agreement or understanding
10 with at least one other person. The agreement or
11 understanding need not be an express or formal agreement or be
12 in writing or carry out all the details." It goes on. It
13 also talks about you aren't in a conspiracy just by being
14 present, and so you have to consider all of these things.

15 So let me go add those, and you can look at it, but
16 that's, I think, what we've agreed we'll do, and let's just --
17 and then we would not give the one that was the next one that
18 goes through the elements of -- you know, that explains the
19 elements.

20 Then the next one that the Government proposed is the
21 one that starts out "If you determine that an agreement
22 existed and the Defendant joined the agreement, then acts and
23 statements knowingly done by a member of the agreement during
24 the existence may be considered." Do you want that
25 instruction still?

1 MR. STEVENS: I would, Judge, yeah.

2 THE COURT: Okay. And what about the bracketed
3 language that says, "Acts and statements which are made before
4 the conspiracy began"? I don't think that really has any
5 relevance, does it?

6 MR. STEVENS: No.

7 THE COURT: Okay. Do you have any objection to this,
8 Mr. Jimerson?

9 MR. JIMERSON: Just to the language "acts or
10 relevance," Judge, but I think you're taking it out --

11 THE COURT: Yeah.

12 MR. JIMERSON: -- so that's fine.

13 THE COURT: And then the next one is the verdict
14 directing instruction on Count II, which is the "possessing a
15 firearm in furtherance of the drug trafficking crime," and
16 that one is based on the standard. Is there any objection?

17 MR. JIMERSON: No objection, Your Honor.

18 THE COURT: Oh, and, actually, what we'll do is we'll
19 put the entrapment before that one, right?

20 MR. JIMERSON: That will work. That's fine, Your
21 Honor.

22 THE COURT: The entrapment will go after Count I
23 elements.

24 MS. BEHRENS: Here's where I'm a little confused then
25 because when you all were talking earlier -- maybe I

1 misheard -- I thought you were saying entrapment with respects
2 to Counts I and II.

3 MR. JIMERSON: Yeah, you're right, I and II but not
4 three.

5 THE COURT: Thank you. So it will go after Count II?

6 MS. BEHRENS: I think so, Your Honor. That's fine.

7 MR. JIMERSON: That's fine.

8 THE COURT: Okay. And I'll add that language about
9 "and unless" -- yeah, okay, I know what we're doing.

10 MR. JIMERSON: That's fine.

11 THE COURT: Okay. And then the next one is Count
12 III, the elements and the definition of firearm and the
13 interstate commerce, correct? So any objection to that one?

14 MR. JIMERSON: No objection, Your Honor. That's
15 fine.

16 THE COURT: The next one is "Regarding Counts II and
17 III of the indictment, the Government must prove the Defendant
18 possessed a firearm. The issue of who actually owned the
19 firearm is not relevant to the issue of whether Defendant
20 possessed the firearm." Any objections to that?

21 MR. JIMERSON: No objection, Your Honor.

22 THE COURT: Okay. And then the next one is
23 "Regarding Count III, the mere knowing possession of a
24 firearm," et cetera. Any objection to that one?

25 MR. JIMERSON: No objection, Your Honor.

1 THE COURT: And the next one is the several kinds of
2 possession -- actual, constructive, joint, and sole. This is
3 the standard instruction. Any objection?

4 MR. JIMERSON: No, no objection, Your Honor.

5 THE COURT: All right. The next one is "Intent or
6 knowledge may be proved like anything else," and it goes on as
7 discussed. Any objection to that one?

8 MR. JIMERSON: No, ma'am.

9 THE COURT: The next one, Mr. Jimerson, is "The law
10 does not require the prosecution to call as witnesses all
11 persons who may have been present." Any objection to that
12 one?

13 MR. JIMERSON: No objection.

14 THE COURT: And then the final one is how to go about
15 deliberating.

16 MR. JIMERSON: No objection, Judge.

17 THE COURT: Okay. And then the verdict form is the
18 verdict form that was proposed by the United States. I didn't
19 see anything wrong with it. Did you all see anything that
20 needed to be changed?

21 MR. JIMERSON: It looked fine to me, Your Honor.

22 THE COURT: Okay. Here's what we'll do. We're going
23 to make these changes. We're going to tell the Jury that we
24 expect at 2:00 that we'll be ready for closing arguments. I'm
25 going to have the clerk tell them that.

1 MR. JIMERSON: Your Honor, before you withdraw, are
2 you making an on-the-record statement regarding the withdrawal
3 instruction?

4 THE COURT: Right. And I am stating at this point
5 that the withdrawal instruction offered by the Defendant is
6 refused.

7 MR. JIMERSON: Yes, ma'am.

8 THE COURT: Okay.

9 MR. JIMERSON: Thank you.

10 MR. STEVENS: Judge, if I could, at this point, I
11 would just formally object to the giving of the entrapment
12 instruction. I don't think I did before, but for purposes of
13 the record, I would do so.

14 THE COURT: All right. And the Government's
15 objection to the entrapment instruction is noted for the
16 record.

17 So we will tell the Jury to be back at 2:00 and we
18 will begin closing arguments. That way, maybe they'll know
19 that it won't be -- you know, I don't expect it to be another
20 really long time. The other issue is, traditionally, you
21 know, I have given the instructions after all of the
22 arguments. I've recently started doing something suggested by
23 another judge that some lawyers like, which is read all except
24 the very last "how to go about deliberating" instruction
25 before the arguments. Do you all like that idea?

1 MR. STEVENS: I think it's a very good idea.

2 MR. JIMERSON: I prefer it, Your Honor.

3 THE COURT: Okay. And then I will bring you out a
4 clean copy of the instructions and the verdict form, and each
5 of you can use them any way you want, including putting them
6 on the ELMO if you want.

7 MR. STEVENS: Thank you, Judge.

8 THE COURT: So you're going to have 30 minutes to
9 argue, and you can give Brittany any warnings you want, you
10 know, for that. Okay.

11 MR. JIMERSON: Yes, ma'am.

12 MR. STEVENS: All right. Thank you.

13 MR. JIMERSON: Thank you, Your Honor.

14 THE COURT: We'll be right back.

15 They have to use 16. You have to use 16 minutes on
16 your 30.

17 MR. STEVENS: I think I'll do 20 and 10, if I can get
18 a 10-minute warning.

19 THE COURT: Yeah. Okay. Sorry, class, but this was
20 all we had.

21 (Court recessed from 1:43 p.m. until 2:20 p.m.)

22 (The following proceedings were held outside the hearing
23 and presence of the Jury.)

24 THE COURT: All right. We just provided you each
25 with a copy of the final instructions along with the verdict

1 form, and if I find any typos as I go along, I'll simply
2 correct them as I go. I think I got the essential points. I
3 don't think there are any typos, but there could be.

4 So are we ready?

5 MR. STEVENS: Yes, Judge.

6 MR. JIMERSON: We are, Your Honor.

7 THE COURT: All right. You may bring in the Jury.

8 MR. JIMERSON: Question --

9 THE COURT: Yes.

10 MR. JIMERSON: -- about the students -- are they
11 gone?

12 THE COURT: They're gone.

13 MR. JIMERSON: Okay.

14 THE COURT: Although they may come back. I don't
15 know what they're up to today.

16 MR. JIMERSON: All right.

17 THE COURT: So there's a possibility they might show
18 up, and if they do, just ignore them.

19 (The following proceedings were held within the hearing
20 and presence of the Jury.)

21 THE COURT: Members of the Jury, we are now -- oh,
22 Members of the Jury, you have now heard all of the evidence in
23 the case, and so we are ready for the closing arguments of the
24 lawyers and the final instructions about the law. As I told
25 you earlier, closing arguments are not evidence; they're

1 simply the lawyers' arguments to you about how they believe
2 you should view the evidence.

3 I will now give you some further instructions. So,
4 members of the Jury, the instructions I gave you at the
5 beginning of the trial and during the trial remain in effect.
6 I now give you some additional instructions.

7 Can you make that just a little bigger, Brittany?
8 Yeah, thanks.

9 You must, of course, continue to follow the
10 instructions I gave you earlier as well as those I give you
11 now. You must not single out some instructions and ignore
12 others because all are important. This is true even though
13 some of those I gave you at the beginning of and during the
14 trial are not repeated here. The instructions I'm about to
15 give you now are in writing and will be available to you in
16 the jury room. I emphasize, however, that this does not mean
17 they are more important than my earlier instructions. Again,
18 all instructions, whenever given and whether in writing or
19 not, must be followed.

20 It is your duty to find from the evidence what the
21 facts are. You will then apply the law as I give it to you to
22 those facts. You must follow my instructions on the law even
23 if you thought the law was different or should be different.
24 Do not allow sympathy or prejudice to influence you. The law
25 demands of you a just verdict, unaffected by anything except

1 the evidence, your common sense, and the law as I give it to
2 you.

3 I have mentioned the word "evidence". The evidence
4 in this case consists of the testimony of witnesses, the
5 documents and other things received as exhibits, and the facts
6 that have been stipulated, that is formally agreed to by the
7 parties. You may use reason and common sense to draw
8 deductions or conclusions from facts which have been
9 established by the evidence in the case.

10 Certain things are not evidence, and I will list
11 those things again for you now. One, statements, arguments,
12 questions, and comments by the lawyers representing the
13 parties in the case are not evidence. Two, objections are not
14 evidence. Lawyers have a right to object when they believe
15 something is improper. You should not be influenced by the
16 objection. If I sustain an objection to a question, you must
17 ignore the question and must not try to guess what the answer
18 might have been. Three, testimony that I struck from the
19 record or told you to disregard is not evidence and must not
20 be considered. Four, anything you saw or heard about this
21 case outside the courtroom is not evidence. Finally, if you
22 were instructed that some evidence was received for a limited
23 purpose only, you must follow that instruction.

24 In deciding what the facts are, you may have to
25 decide what testimony you believe and what testimony you do

1 not believe. You may believe all of what a witness said or
2 only a part of it or none of it. In deciding what testimony
3 to believe, consider the witness' intelligence, the
4 opportunity the witness had to have seen or heard things
5 testified about, the witness' memory, any motives that witness
6 may have for testifying a certain way, the manner of the
7 witness while testifying, whether that witness said something
8 different at an earlier time, the general reasonableness of
9 the testimony, and the extent to which the testimony is
10 consistent with any evidence that you believe. In deciding
11 whether or not to believe a witness, keep in mind that people
12 sometimes hear or see things differently and sometimes forget
13 things. You need to consider, therefore, whether a
14 contradiction is an innocent misrecollection or lapse of
15 memory or an intentional falsehood, and that may depend
16 whether it has to do with an important fact or only a small
17 detail.

18 The Government and Defendant Daryl Warren have
19 stipulated, that is they have agreed, that certain facts are
20 as counsel have stated. You must, therefore, treat those
21 facts as having been proved.

22 You have heard testimony from persons described as
23 experts. Persons who, by knowledge, skill, training,
24 education, or experience, have become expert in some field may
25 state their opinions on matters in that field and may also

1 state the reasons for their opinions. Expert testimony should
2 be considered just like any other testimony. You may accept
3 or reject it and give it as much weight as you think it
4 deserves considering the witness' education and experience,
5 the soundness of the reasons given for the opinion, the
6 acceptability of the methods used, and all the other evidence
7 in the case.

8 You have heard evidence that Defendant Daryl Warren
9 was convicted of (a) two counts of possession of a controlled
10 substance, in St. Louis City Circuit Court, on August 24th,
11 2007; (b) felon in possession of a firearm, in the U.S.
12 District Court of the Eastern District of Missouri, on
13 July 20th, 2007; (c) drug trafficking, second degree, and
14 possession of a controlled substance, in St. Louis City
15 Circuit Court, on July 2, 2001; and (d) two counts of
16 possession of a controlled substance, in St. Louis City
17 Circuit Court, on May 17th, 1999. You may consider this
18 evidence only if you unanimously find it is more likely true
19 than not true. You decide that by considering all the
20 evidence and deciding what evidence is more believable. This
21 is a lower standard than proof beyond a reasonable doubt. If
22 you find this evidence has been proved, then you may consider
23 it to help you decide Defendant Daryl Warren's motive,
24 opportunity, intent, and knowledge. You may also consider it
25 to help you decide Defendant Daryl Warren's criminal

1 predisposition with respect to Defendant's claim of
2 entrapment. You should give it the weight and value you
3 believe it is entitled to receive. If you find that this
4 evidence has not been proved, you must disregard it.
5 Remember, even if you find that the Defendant may have
6 committed similar acts in the past, this is not evidence that
7 he committed such an act in this case. You may not convict a
8 person simply because you believe he may have committed
9 similar acts in the past. The Defendant is on trial only for
10 the crime charged, and you may consider the evidence of prior
11 acts only on the issues stated above.

12 The indictment in this case charges the Defendant
13 with three different crimes. Count I charges that Defendant
14 Daryl Warren committed the crime of conspiracy to possess with
15 intent to distribute in excess of five kilograms of cocaine.
16 Count II charges that Defendant Daryl Warren committed the
17 crime of possessing a firearm in furtherance of a drug
18 trafficking crime. Count III charges that Defendant Daryl
19 Warren committed the crime of felon in possession of a
20 firearm. Defendant has pleaded not guilty to each of those
21 charges. The indictment is simply the document that formally
22 charges the Defendant with the crimes for which he is on
23 trial. The indictment is not evidence. At the beginning of
24 trial, I instructed you that you must presume the Defendant to
25 be innocent. Thus, the Defendant began the trial with a clean

1 slate, with no evidence against him. The presumption of
2 innocence alone is sufficient to find Defendant not guilty of
3 each count. This presumption can be overcome as to each
4 charge only if the Government proved during the trial beyond a
5 reasonable doubt each element of that charge. Keep in mind
6 that you must consider separately each crime charged against
7 the Defendant and you must return a separate verdict for each
8 of those crimes charged. There is no burden upon a defendant
9 to prove that he is innocent.

10 I left out a word there.

11 There's no burden on a defendant to prove that he is
12 innocent. Instead, the burden of proof remains on the
13 Government throughout the trial. The fact that a defendant
14 did not testify must not be considered by you in any way or
15 even discussed in arriving at your verdict.

16 Reasonable doubt is doubt based upon reason and
17 common sense and not doubt based upon speculation. A
18 reasonable doubt may arise from careful and impartial
19 consideration of all the evidence or from a lack of evidence.
20 Proof beyond a reasonable doubt is proof of such a convincing
21 character that a reasonable person, after careful
22 consideration, would not hesitate to rely and act upon that
23 proof in life's most important decisions. Proof beyond a
24 reasonable doubt is proof that leaves you firmly convinced of
25 the Defendant's guilt. Proof beyond a reasonable doubt does

1 not mean proof beyond all possible doubt.

2 Omitting the formal caption and signature blocks, the
3 indictment in this case reads in pertinent part as follows:

4 Count I: The Grand Jury charges that beginning at a
5 time unknown to the Grand Jury but up to and including
6 June 5th, 2013, in the city of St. Louis, within the Eastern
7 District of Missouri, Daryl Warren, the Defendant herein,
8 acting with others known and unknown to the Grand Jury, did
9 knowingly and willfully conspire, combine, confederate, and
10 agree to commit an offense against the United States, to wit,
11 to possess with intent to distribute in excess of five
12 kilograms of a mixture or substance containing a detectable
13 amount of cocaine, a Schedule II narcotic controlled substance
14 drug, in violation of Title 21 United States Code § 841(a)(1)
15 and 846.

16 Count II: The Grand Jury further charges that on or
17 about June 5th, 2013, in the city of St. Louis, within the
18 Eastern District of Missouri, Daryl Warren, the Defendant
19 herein, acting with others known and unknown to the Grand
20 Jury, did knowingly possess a firearm in furtherance of a drug
21 trafficking crime, which may be prosecuted in a court of the
22 United States, to wit, conspiracy to possess with the intent
23 to distribute cocaine as charged in Count I herein, in
24 violation of Title 18 United States Code § 924(c)(1).

25 Count III: The Grand Jury further charges that on or

1 about June 5th, 2013, in the city of St. Louis, within the
2 Eastern District of Missouri, Daryl Warren, the Defendant
3 herein, having been convicted previously of a felony crime
4 punishable by a term of imprisonment exceeding one year, did
5 knowingly possess a firearm which traveled in interstate or
6 foreign commerce during or prior to being in Defendant's
7 possession, in violation of Title 18 United States Code §
8 922(g)(1).

9 The indictment is based on federal statutes, which
10 are federal law. Count I of the indictment is based upon
11 Title 21 United States Code § 841(a)(1), which reads in
12 pertinent part as follows: (a) it shall be unlawful for any
13 person to knowingly or intentionally (1) to possess with
14 intent to distribute a controlled substance. Count I is also
15 based on Title 21 United States Code § 846, which reads in
16 pertinent part as follows: Any person who conspires to commit
17 any offense shall be sentenced according to law.

18 Count II is based upon Title 18 United States Code §
19 924(c)(1), which reads in pertinent part as follows: Any
20 person who, in furtherance of any drug trafficking crime for
21 which the person may be prosecuted in a court of the United
22 States, possesses a firearm shall be sentenced according to
23 law.

24 Count III of the indictment is based upon Title 18
25 United States Code § 922(g)(1), which reads in pertinent part

1 as follows: It shall be unlawful for any person who has been
2 convicted in any court of a crime punishable by imprisonment
3 for a term exceeding one year to possess in or affecting
4 commerce any firearm.

5 The indictment charges that the offenses were
6 committed on or about a certain date. Although it is
7 necessary for the Government to prove beyond a reasonable
8 doubt that the offenses were committed on a date reasonably
9 near the dates alleged in the indictment, it is not necessary
10 for the Government to prove that the offenses were committed
11 precisely on the date charged.

12 The crime of conspiracy as charged in Count I of the
13 indictment has four elements.

14 Oh, my, I made a mistake on that. Would you pull it
15 back off? I'm going to correct the typo. I'll read it to you
16 correctly, and then I'll give you the -- I'll give you a
17 corrected version to go in to you in writing. So here's what
18 it says.

19 The crime of conspiracy as charged in Count I of the
20 indictment has four elements, which are: One, on or before
21 June 5th, 2013, two or more people reached an agreement to
22 commit the crime of possession with intent to distribute
23 cocaine; two, the Defendant voluntarily and intentionally
24 joined in the agreement, either at the time it was first
25 reached or at some later time while it was still in effect;

1 three, at the time the Defendant joined in the agreement, the
2 Defendant knew the purpose of the agreement; and, four, the
3 agreement or understanding involved in excess of five
4 kilograms of a mixture or substance containing cocaine. If
5 you find these four elements unanimously and beyond a
6 reasonable doubt and if you find unanimously and beyond a
7 reasonable doubt that the Defendant was not entrapped as
8 defined in Instruction 17, then you must find the Defendant
9 guilty of the crime charged in Count I. Otherwise, you must
10 find the Defendant not guilty of the crime charged in Count I.

11 And then, yeah, you can go back.

12 The Government must prove that the Defendant reached
13 an agreement or understanding with at least one other person.
14 The agreement or understanding need not be an express or
15 formal agreement or be in writing or cover all the details of
16 how it is to be carried out, nor is it necessary that the
17 members have directly stated between themselves the details or
18 purpose of the scheme. You should understand that merely by
19 being present at the scene of an event or merely acting in the
20 same way as others or merely associating with others does not
21 prove that a person has joined in an agreement or
22 understanding. A person who has no knowledge of a conspiracy
23 but who happens to act in a way which advances some purposes
24 of one does not thereby become a member, but a person may
25 joint in an agreement or understanding as required by this

1 element without knowing the -- all the details of the
2 agreement or understanding and without knowing who the other
3 members are. Further, it is not necessary that a person agree
4 to play any particular part in carrying out the agreement or
5 understanding. A person may become a member of a conspiracy
6 even if that person agrees only to play a minor part in the
7 conspiracy as long as that person has an understanding of the
8 unlawful nature of the plan and voluntarily and intentionally
9 joins in it. You must decide, after considering all the
10 evidence, whether the conspiracy alleged in Count I of the
11 indictment existed. If you find that the alleged conspiracy
12 did exist, you must also decide whether the Defendant
13 voluntarily and intentionally joined in the conspiracy either
14 at the time it was first formed or at some later time while it
15 was still in effect. In making that decision, you must
16 consider only evidence of the Defendant's own actions and
17 statements.

18 If you determine that an agreement existed and the
19 Defendant joined in the agreement, then acts and statements
20 knowingly done or made by a member of the agreement during the
21 existence of the agreement and in furtherance of it may be
22 considered by you as evidence pertaining to the Defendant even
23 though the acts and statements were done or made in the
24 absence of and without the knowledge of the Defendant. This
25 includes acts done or statements made before the Defendant

1 joined the agreement because a person who knowingly,
2 voluntarily, and intentionally joins an existing conspiracy
3 becomes responsible for all the conduct of the coconspirators
4 from the beginning of the conspiracy.

5 The crime of possessing a firearm in furtherance of a
6 drug trafficking crime as charged in Count II of the
7 indictment has two elements, which are: One, the Defendant
8 committed the crime of conspiracy to possess with intent to
9 distribute cocaine; and, two, the Defendant knowingly
10 possessed a firearm in furtherance of that crime; three -- I'm
11 sorry. That's it. The phrase "in furtherance of" should be
12 given its plain meaning, that is the act of furthering,
13 advancing, or helping forward. The phrase "in furtherance of"
14 is a requirement that the Defendant possess the firearm with
15 the intent that it advance, assist, or help commit the crime,
16 not that it actually did so. If you find these two elements
17 unanimously and beyond a reasonable doubt and if you find
18 unanimously and beyond a reasonable doubt that the Defendant
19 was not entrapped as defined in Instruction #17, then you must
20 find the Defendant guilty of the crime charged in Count II.
21 Otherwise, you must find the Defendant not guilty of the crime
22 charged in Count II.

23 And then Instruction 17 is: One of the issues with
24 regard to Counts I and II is whether the Defendant was
25 entrapped. The Government has the burden of proving beyond a

1 reasonable doubt that the Defendant was not entrapped by
2 showing either, one, the Defendant was willing to commit the
3 crime of conspiracy to possess with intent to distribute
4 cocaine and to commit the crime of possession of a firearm in
5 furtherance of a drug trafficking crime before he was
6 approached or contacted by law enforcement agents or someone
7 acting for the government or, two, the government or someone
8 acting for the government did not persuade or talk the
9 Defendant into committing a -- committing conspiracy to
10 distribute cocaine or possession of a firearm in furtherance
11 of a drug trafficking crime. If you find that the Government
12 proved at least one of these two things beyond a reasonable
13 doubt, then you must reject the Defendant's claim of
14 entrapment. If you find that the Government failed to prove
15 at least one of these two things beyond a reasonable doubt,
16 then you must find the Defendant not guilty. The law -- the
17 law allows the government to use undercover agents, deception,
18 and other methods to present a person already willing to
19 commit a crime with the opportunity to commit a crime, but the
20 law does not allow the government to persuade an unwilling
21 person to commit a crime. Simply giving someone a favorable
22 opportunity to commit a crime is not the same as persuading
23 him.

24 Instruction 18: It is a crime for a felon to possess
25 a firearm as charged in Count III of the indictment. This

1 crime has three elements, which are: One, the Defendant had
2 been convicted of a crime punishable by imprisonment for more
3 than one year; two, after that, the Defendant knowingly
4 possessed a firearm; and, three, the firearm was transported
5 across a state line at some time during or before the
6 Defendant's possession of it. You are instructed that the
7 Government and Defendant have agreed that the Defendant has
8 been convicted of a crime punishable by imprisonment for more
9 than one year under the laws of the state of Missouri, and you
10 must consider the first element as proven. If you have found
11 beyond a reasonable doubt that the firearm in question was
12 manufactured in a state other than Missouri and that the
13 Defendant possessed that firearm in the state of Missouri,
14 then you may but are not required to find that it was
15 transported across a state line. The term "firearm" means any
16 weapon which will or is designed to or may be readily
17 converted to expel a projectile by the action of an explosive.
18 If all of these elements have been proved beyond a reasonable
19 doubt, then you must find the Defendant guilty of the crime
20 charged in Count III. Otherwise, you must find the Defendant
21 not guilty of the crime charged in Count III.

22 Regarding Counts II and III of the indictment, the
23 Government must prove that the Defendant possessed a firearm.
24 The issue of who actually owned the firearm is not relevant to
25 the issue of whether the Defendant possessed the firearm.

1 Regarding Count III of the indictment, the mere
2 knowing possession of a firearm by a previously convicted
3 felon is a violation of the laws of the United States. It is
4 not necessary, therefore, that the Government prove that the
5 Defendant knew that it was unlawful for him to possess the
6 firearm or the Defendant knew that the firearm had traveled in
7 interstate commerce. It is sufficient if you find beyond a
8 reasonable doubt that the Defendant knowingly possessed the
9 firearm.

10 The law recognizes several kinds of possession. A
11 person may have actual possession or constructive possession.
12 A person may have sole or joint possession. A person who
13 knowingly has direct physical control over a thing at a given
14 time is then in actual possession of it. A person who
15 although not in actual possession has both the power and the
16 intention at a given time to exercise dominion or control over
17 a thing either directly or through another person or persons
18 is then in constructive possession of it. If one person alone
19 has actual or constructive possession of a thing, possession
20 is sole. If two or more persons share actual or constructive
21 possession of a thing, possession is joint. Whenever the word
22 "possession" has been used in these instructions, it includes
23 actual as well as constructive possession and also sole as
24 well as joint possession.

25 Intent or knowledge may be proved like anything else.

1 You may consider any statements made and acts done by the
2 Defendant and all the facts and circumstances in evidence
3 which may aid in a determination of the Defendant's knowledge
4 or intent. You may but are not required to infer that a
5 person intends the natural and probable consequences of acts
6 knowingly done or knowingly omitted.

7 The law does not require the prosecution to call as
8 witnesses all persons who may have been present at any time or
9 place involved in the case or who may appear to have some
10 knowledge of the matters in issue in this trial, nor does the
11 law require the prosecution to produce as exhibits all papers
12 and things mentioned in the evidence. The Jury will always
13 bear in mind that the law never imposes upon a defendant in a
14 criminal case the burden or duty of calling any witnesses or
15 producing any evidence and no adverse inferences may be drawn
16 from his failure to do so.

17 All right. Members of the Jury, at this time, we are
18 ready for the closing arguments. Following the closing
19 arguments, I will give you some final instructions about the
20 procedures to use.

21 You may proceed.

22 MR. STEVENS: Thank you, Your Honor.

23 Counsel, Your Honor, ladies and gentlemen of the
24 Jury.

25 "It sounds pretty good. It's going to be a shootout

1 though." You've heard that phrase a few times, those two
2 sentences a few times. Those are these Defendants' words.
3 "It's going to be a shootout though." Well, what's he talking
4 about there? "It sounds good. It's going to be a shootout."
5 What sounds good? What's going to be a shootout? The
6 conspiracy, Count I, the conspiracy to go in there and get
7 those kilograms of cocaine and then to distribute them.
8 That's what he's talking about. "It's going to be a
9 shootout." That tells you almost everything you need to know
10 about this case, ladies and gentlemen. It establishes in
11 Count I that we're talking about a conspiracy, that we're
12 going to go in there and get those kilograms of cocaine and
13 then it's going to be a shootout. What does that mean? That
14 there are guns involved, Counts II and III, and that he's
15 going to possess those guns in furtherance of the conspiracy.
16 In Count II, that's what he's charged with and that's what
17 we've proven him guilty of. That he's a felon in possession
18 of a firearm in Count III. "It's going to be a shootout." He
19 possessed those guns, ladies and gentlemen, and we've
20 established that he was a felon. So those two sentences tell
21 you just about everything you need to know, but there's a
22 whole lot more here.

23 Let's talk about -- the Judge just instructed you on
24 all the instructions, including the elements of each of these
25 crimes. In Count I, the Judge instructed you to the elements,

1 the first element that two or more people reach an agreement
2 to commit the crime of possession with intent to distribute
3 cocaine. That means that they agreed to possess with intent
4 to distribute in excess of five kilograms of cocaine, not that
5 they actually possessed the cocaine, not that they actually
6 distributed it -- I mentioned this in jury selection
7 yesterday -- but that they agree that they were going to go in
8 there, get that cocaine, possess it, and then distribute it,
9 the 20 to 22 kilograms of cocaine. That's the first element.

10 THE COURT: Counsel, would you pull that microphone
11 over to the other side?

12 MR. STEVENS: Sure, Judge.

13 THE COURT: Thanks.

14 MR. STEVENS: The second element -- that the
15 Defendant voluntarily joined the agreement. Ladies and
16 gentlemen, we've heard a lot about this, and this goes also to
17 this entrapment business that the Defendant has raised. The
18 Defendant voluntarily joined in the agreement. Now, he
19 claims -- and you heard it in opening statement -- that this
20 overzealous federal agent, Agent Zayas, drug him into this
21 thing; the government drug him into this thing, right? Well,
22 that's not what you saw on this video, and let me make this
23 point, ladies and gentlemen. Not only did the government not
24 drag him into this thing; the government didn't bring him into
25 this at all. Who brought Daryl Warren into this case? Robert

1 Washington did. Robert Washington doesn't work for the
2 government. Robert Washington's a coconspirator, just like
3 Michael Twitty. He doesn't work for the government. He's not
4 the government. He didn't bring this Defendant into this
5 case, but make no mistake, ladies and gentlemen; neither
6 Robert Washington or anyone else forced this Defendant to do
7 this. You've seen the video. You've seen the evidence. This
8 Defendant chose to show up and meet with these individuals
9 three separate times to do this home invasion robbery, to do
10 this cocaine conspiracy and the other crimes. Robert
11 Washington brought him in, not the government, but no one
12 forced him, including Robert Washington. He chose to do this.

13 And I want to point something out, ladies and
14 gentlemen -- the phone calls June 3rd, 4th, and 5th. You saw
15 those, the phone calls between Robert Washington and Daryl
16 Warren. Mr. Jimerson, the defense there, made a point with
17 Agent Zayas on the phone that none of those are phone calls to
18 Daryl -- to Agent Zayas. Agent Zayas never talked on the
19 phone to Daryl Warren. Robert Washington and Daryl Warren
20 were conspiring on their own. Now we can't say that every one
21 of those phone calls had something to do with these crimes,
22 but, ladies and gentlemen, June 3rd, 4th, and 5th are the days
23 that they're talking about doing this home invasion robbery.
24 Do you think in the lives of these guys that's an event big
25 enough that you might mention it in a phone call between the

1 two conspirators? How about the day that they're going to go
2 do the robbery on June 5th? Do you think in all those phone
3 calls, 12 phone calls that day before they're arrested, they
4 may have mentioned, hey, you know, this conspiracy is going
5 on, this stash house robbery today. I submit that's what
6 happened, but none of those calls involved Agent Zayas because
7 these two are conspiring without him even being around, let
8 alone dragging them into this, and I'll talk about that more,
9 how we know that they were conspiring on their own without
10 Agent Zayas even present, let alone entrapping anybody.

11 The third element of Count I is that the Defendant
12 knew the purpose of the agreement, and the fourth element,
13 that the agreement involved more than five kilograms of
14 cocaine, and I want to talk in regard to those elements and
15 all four elements about the evidence in more detail now. This
16 is what the case has been all about, ladies and gentlemen, the
17 four elements in Count I. All right. That's what the case is
18 all about. May 21st and May 23rd, 2013, Robert Washington
19 sells cocaine to the ATF, to Agent Zayas and the informants.
20 On May 29, the focus of this investigation changes because
21 Robert Washington indicates he knows people who will do home
22 invasion robberies. And who does he introduce him to? This
23 Defendant, Daryl Warren. On June 3rd of 2013, Robert
24 Washington introduces this Defendant as the individual and
25 Michael Twitty as the other individual who would do a home

1 invasion robbery, but we don't have to take his word for it
2 because over the next three days we know that that's true.
3 They prove over and over and over again that they're willing
4 to do this robbery and that they're going to do this robbery
5 and that when they rolled onto the lot to meet with Agent
6 Zayas on June 3rd of 2013 they were willing to do this. The
7 evidence established that beyond a reasonable doubt.

8 So on June 13th they meet, and Agent Zayas, having
9 been introduced to Mr. Warren as the individual who would do
10 this, runs through the scenario. He's a drug courier for a
11 Mexican drug cartel, picks up five to six kilograms of cocaine
12 at this stash house; he's not paid enough to do it; he's
13 getting ripped off. He says that there's a guard there at the
14 house, two guards, one that has a pistol. He says that
15 there's an additional 20 to 22 kilograms of cocaine. That's
16 the amount we're talking about in this conspiracy, ladies and
17 gentlemen. It's charged as in excess of five kilograms of
18 cocaine. We have well in excess of that because the
19 conspiracy was all about the cocaine that was in that house --
20 getting their hands on it, possessing it, and distributing it.
21 All right. So he tells them these things, and he says, "I'm
22 looking for someone to go into that house and rob the house of
23 that cocaine, and then we can distribute it." And what's the
24 response from Daryl Warren? Not, "Hey, I don't want any part
25 of this" or that he was surprised by this in any way. It's,

1 "How many dudes are in the house? Where's the area at?" He
2 wants information he's going to need to do this robbery in two
3 days. Agent Zayas continues throughout this to give him --
4 far from talking him into this or trying to persuade him to do
5 it, he gives him every opportunity to walk away. In that
6 first meeting, after he shows interest in this, Agent Zayas
7 asks him, "Is this something you guys can handle?" What is
8 Daryl Warren's response? "Yeah, yeah, we can handle this."
9 If he had said no, ladies and gentlemen, the investigation
10 would have ended and none of us would be here, but he didn't
11 say no. He said, "Yeah, we can handle it," and then Agent
12 Zayas asked him another question. "Are you guys -- you're not
13 going to have any problem unloading this, are you?"

14 "No." That was Daryl Warren's response. "No, we're
15 not going to have any problem distributing these kilogram
16 quantities of cocaine."

17 Those were his responses, those were his words, and
18 he's accountable for them. He's also accountable for the
19 statements of the other coconspirators like Michael Twitty.
20 Do you remember in that first meeting when they're sitting in
21 the Cadillac; Mr. Twitty's in back, but he says, "Hey, when
22 you get that call, you've got to at least call us." He wants
23 to be involved. Daryl Warren is sitting in the seat right in
24 front of him, in the driver's seat, and I think it's somewhat
25 ironic that he's in the driver's seat because, as we see, he

1 is running this thing. He's in the driver's seat, but Twitty
2 says, "Hey, when you get that call from those Mexicans about
3 the drugs, you've got to call us. We want to be involved."
4 This is Daryl Warren's coconspirator. The Judge instructed
5 you that the statements of the coconspirators are evidence
6 against this Defendant, including that statement.

7 Now, at the end of this meeting, what happens? This
8 is -- and, again, keep in mind this is just the first meeting,
9 June 3rd, 2013. They shake hands. Everybody shakes hands.
10 Warren, Daryl Warren, shakes Agent Zayas' hand. Robert
11 Washington shakes his hand. They have an agreement here,
12 ladies and gentlemen. They know what they're going to do two
13 days later. That's a conspiracy. The conspiracy is
14 consummated that day. It doesn't have to be a formal written
15 agreement, as the Judge instructed you. They've come to an
16 agreement. The conspiracy is proved, but it doesn't end
17 there.

18 The next day, again, June 4 of 2013, what happens?
19 He comes back again. No phone call from Agent Zayas. No
20 tracking him down. No trying to bring him there. Agent Zayas
21 sits on a lot, and Daryl Warren -- or shows up on the lot.
22 Daryl Warren and Robert Washington are there. They're there.
23 They beat him there, and they discuss this home invasion
24 robbery some more.

25 That's the second meeting, June 4 of 2013. Again,

1 Daryl Warren's there on the lot, and what does he say? Not
2 "Hey, I'm having second thoughts." Not "I don't want any
3 part." I mean he's already showed up there. He wants the
4 information, again, that he needs to do this robbery. He's
5 asking about it, and he's obviously -- he's saying, "My people
6 are skeptical about how many people are in that back room.
7 How many people are in this house?" Why does he need to know
8 that? Because he's going to do this robbery, to go in there
9 and get the cocaine and distribute it, and that unknown --
10 remember Agent Zayas talked about introducing unknowns because
11 we don't want people who are down on their luck and just get
12 entrapped into these things, and that's why we're talking
13 about 20 kilos of cocaine and we're talking about an armed
14 guard because you don't want just your average criminal,
15 ladies and gentlemen. You want someone who's willing to do
16 this, and at every opportunity, Daryl Warren showed he was
17 willing to do this.

18 That unknown about how many people -- maybe that's
19 why he brought the assault rifle. This has 23 rounds in the
20 magazine. Maybe he thought there were going to be five guys
21 back there and that's why you bring a gun like that instead of
22 just eight rounds in the .40 caliber. He wasn't deterred by
23 the unknown; he planned for it. At the end of this meeting is
24 when the Defendant says, "It sounds pretty good. It's going
25 to be a shootout though." Again, ladies and gentlemen, I

1 think that tells you everything you need know about this
2 Defendant. They agreed that they're going to do the robbery
3 the next day, and again, at this point, ladies and gentlemen,
4 they have already agreed that they are going to -- they have
5 agreed they're going to possess with intent to distribute more
6 than five kilograms of cocaine. The conspiracy, the agreement
7 is done, but again, it doesn't end.

8 What do they do the next day? They show up to do the
9 robbery. June 5 of 2013, they show up on the car wash lot. A
10 third time this Defendant shows up. Again, the phone records
11 show us that Agent Zayas isn't seeking him out. They get
12 there on the lot, and do you remember the Defendant saying
13 there, ladies and gentlemen, "If something goes down, I don't
14 want my people taking a fall," and his coconspirator Twitty
15 says, "It's just us." He knew that if they got arrested they
16 were going to take a fall. He didn't say, "If something goes
17 down, I'm going to claim entrapment."

18 "If something goes down, we're going to take a fall,"
19 and now here he is trying to avoid exactly the consequences he
20 knew he'd have to pay if he got arrested, if things went down,
21 and here we are.

22 They said on that lot, ladies and gentlemen -- when
23 Agent Zayas asked, "Are you ready right here and right
24 now?" -- you saw the video -- "Yeah, we're ready." They're
25 ready to go and do this robbery right here and right now.

1 The Defendant's role in this case -- he told you what
2 it was. "I'm going in, and I'm going to tell them what to
3 do," and he says that Robert Washington is going to be the
4 getaway driver. There's no conversation between them and
5 Agent Zayas about, "Hey, Richie, what do you think our roles
6 should be" or "Hey, Robert, do you want to be the driver, and
7 I'll go into the house. Me and Twitty will go into the
8 house." Do you know why? Because they're conspiring outside
9 of his presence, ladies and gentlemen. They're putting this
10 plan together independent of Agent Zayas. He never asked them
11 to bring guns along. They get the guns, and they put them in
12 his trunk, and they're ready to do the robbery. This
13 Defendant is running this, and he told you that. "I'm coming
14 in, and I'm going to tell them what to do."

15 At the arrest location that day, June 5th of 2013,
16 they show up, and Agent Zayas shows them the trap car. What
17 possible purpose is there for them to go over there and watch
18 him perform the elaborate things necessary to get that trap to
19 open up that they're going to hide all this cocaine in? The
20 only reason is because they were going to go in and complete
21 the conspiracy. Of course, they were arrested first. They
22 were actually going to possess with the intent to distribute
23 the cocaine. They've already done the conspiracy. They were
24 going to complete it, but they never got that far because they
25 were arrested there on that lot after checking out the trap

1 car they were going to need for all their cocaine.

2 Now, ladies and gentlemen, that brings me to Count
3 II, possession of a firearm in furtherance of the cocaine
4 conspiracy. The first element is that the Defendant committed
5 the conspiracy to possess with intent to distribute cocaine.
6 So when you find this Defendant guilty on Count I, you'd also
7 be finding him guilty of the first element of Count II. The
8 same evidence proves both. That brings me to the second
9 element that this Defendant knowingly possessed a firearm in
10 furtherance of the conspiracy. Let's talk about the evidence
11 of that. I've already talked about the firearms a little bit
12 because they're part of the conspiracy, but how do we know
13 that he knowingly possessed those firearms in furtherance of
14 the conspiracy? Well, we can start with Agent Townsend's
15 testimony today that when they searched his car after he
16 pulled it onto the lot -- the same car he had brought to every
17 meeting -- in the trunk, they find Government's Exhibits 31
18 and 33, the two firearms, both firearms in his trunk, the
19 trunk of his car, and, ladies and gentlemen, when you put that
20 in context, isn't it clear what happened here? In context, he
21 was about to do this home invasion robbery.

22 THE CLERK: Five minutes.

23 MR. STEVENS: Thank you.

24 There's been discussion all along about "It's going
25 to be a shootout." Remember Agent Zayas expressing concern

1 when he says that he's got someone else running around out
2 there? Agent Zayas expressed his concern about getting shot
3 in the head. Does Daryl Warren or anyone else say, "What are
4 you talking about? We're not talking about bringing guns.
5 There aren't any guns here." Instead, he lies to them and
6 says, "Oh, the tools and the heat and the ammunition are with
7 somebody else." He knows you have to have guns to do this,
8 and he's got them in his trunk. So when you put it in
9 context, ladies and gentlemen, it's clear that he knowingly
10 possessed these firearms and he had them for the purpose of
11 this conspiracy.

12 In defense counsel's opening, he suggested to you --
13 this isn't evidence, but he suggested to you that maybe Daryl
14 Warren -- that Michael -- that Michael Twitty had the .40
15 caliber and Daryl Warren handled it briefly and then Twitty
16 put it in his trunk and that Robert Washington had the assault
17 rifle and then he put it in Daryl Warren's trunk. Well,
18 ladies and gentlemen, even if that were true, it's possession.
19 Look at the Court's instructions. Actual possession -- having
20 something in your hands. Daryl Warren had the pistol in his
21 hands. Constructive possession -- his two coconspirators put
22 them in his trunk. He still possesses those, ladies and
23 gentlemen. It's constructive possession. He has the ability
24 to exercise control over those. He knows they're there, and
25 beyond that, the Court instructed you on joint possession.

1 The simple fact that either Michael Twitty or Robert
2 Washington possessed these doesn't mean that the Defendant
3 didn't also. It's joint possession. More than one person can
4 possess any object, including firearms. The Court instructed
5 you on that, and I ask you to take a look at that instruction,
6 but, ladies and gentlemen, we all know what happened here.
7 This Defendant is talking for three days about the need to
8 have firearms for this. He possessed those firearms in his
9 trunk. Whether it was actual possession, constructive
10 possession, joint or sole possession, he possessed these
11 firearms. I think that's obvious from the evidence.

12 Finally, Count III, felon in possession of a firearm.
13 That the Defendant was previously convicted of a felony crime,
14 we proved that through the stipulation. The parties have
15 stipulated to that, and you have to accept that as proven.
16 That he knowingly possessed these firearms -- well, I've
17 already talked about the evidence that establishes that. The
18 same evidence proves the second element of Count III, and
19 finally, the third element that they were transported across a
20 state line, the guns were transported across a state line.
21 Agent Eleveld, the expert, testified that they've been
22 manufactured outside the state of Missouri, and that
23 establishes that element. And so, ladies and gentlemen, we've
24 proved all three counts in this case beyond a reasonable
25 doubt.

1 I want to say one more thing regarding this
2 entrapment. The Court read you Instruction #17, and it's the
3 Government's burden to prove either that the Defendant was
4 willing to commit the conspiracy to -- and the crime of
5 possession of a firearm in furtherance of a drug trafficking
6 crime before he was approached by law enforcement, and again,
7 as I've already said, he wasn't -- this doesn't even apply.
8 He wasn't approached by law enforcement. He wasn't approached
9 by Agent Zayas. Robert Washington brought him into this --
10 his coconspirator -- and he came in willingly, and when he
11 arrived on that lot on June 3rd of 2013, he was willing to do
12 this. No one had to talk him into it. No one had to persuade
13 him to do this. You saw that from the videos. There's none
14 of that. Every opportunity he had to walk away, he didn't.
15 In fact, not only did he not walk away, he continued to come
16 back on June 4th and June 5th.

17 When you get down to the bottom of this
18 instruction -- and the entire instruction is important,
19 obviously, but the upshot is, ladies and gentlemen, that the
20 government can use undercover agents, deception, and other
21 methods to present a person already willing to commit a crime
22 with an opportunity to commit the crime. If you don't think
23 that Daryl Warren was willing to commit this crime, ladies and
24 gentlemen, then acquit him, but the evidence doesn't show
25 that. We all know he was willing to commit this crime and he

1 did everything he needed to do to commit this crime. The law
2 does not allow the government to persuade an unwilling person
3 to commit a crime, and that's not what happened here. This is
4 not an unwilling person. Daryl Warren showed you just how
5 willing he was to do this. He was eager to do this.

6 The last line of the instruction, "Simply giving
7 someone a favorable opportunity to commit a crime is not the
8 same as persuading him." In other words, there's nothing
9 wrong with the government providing him a favorable
10 opportunity to commit this crime and see what he does, see
11 what he's willing to do.

12 THE CLERK: Twenty minutes.

13 MR. STEVENS: Thank you.

14 He was given the opportunity, and he grabbed it with
15 both hands. He wanted this opportunity, and he took it,
16 ladies and gentlemen, and he's guilty on all three counts. In
17 a few minutes, I'll have the opportunity to talk to you again.
18 Because I have the burden of proof, I will have the last word
19 in this case. Thank you.

20 THE COURT: Take those down, and can you clear the
21 screen, too?

22 All right. Mr. Jimerson.

23 MR. JIMERSON: Thank you, Your Honor.

24 THE COURT: Can one of you all clear the screen,
25 please?

1 THE CLERK: I've got it.

2 THE COURT: Thanks, Brittany. You might move that
3 mike over, yeah.

4 MR. JIMERSON: May it please the Court. Mr. Stevens,
5 Ms. Behrens, ladies and gentlemen of the Jury, good afternoon.
6 We're here for the closing argument.

7 THE COURT: Excuse me, Mr. Jimerson. Pull the mike
8 down towards you a little bit.

9 MR. JIMERSON: Okay.

10 THE COURT: There you go. That will be better.
11 Thanks.

12 MR. JIMERSON: Thank you. We're here for the closing
13 argument, and that's my opportunity to argue to you what I
14 believe that the Government did not prove on behalf of my
15 client, Mr. Daryl Warren. I always say to the Jury at this
16 point, basically, if I offended you in some kind of manner,
17 please don't take it against Mr. Warren. I know you won't,
18 but I have to say that. I did say something in the trial that
19 I regret. I -- I -- I called Special Agent Zayas a liar. I
20 mean I said that before, even before I can argue that, but I
21 do want you to consider some things that he said, and he
22 admitted to saying -- saying lies. I do want you to consider
23 that, and then you can judge him regarding what he said,
24 regarding whether he was telling the truth or not.

25 I want to warn you, and I'm frightened today after

1 Mr. Stevens' argument. I'm frightened for us, for the people
2 of the United States, particularly, in this reason.

3 Mr. Stevens just told you that any person, any agent can come
4 up to you and lie and by simply you nodding your head or
5 saying, "Uh-huh, yeah," whatever, then, basically, you're
6 involved in a conspiracy that you, basically, can't get out
7 of. That's the effect of what he's telling you. That's the
8 effect of what Mr. Stevens has just said, that, basically,
9 that the government can do anything to get you and snare you
10 into committing a crime, and basically, by your simple being
11 there or your verbal acknowledgment or something, you are
12 guilty. I have something I want to argue against that. It's
13 called the First Amendment. You can say what you want to say
14 in this country, whether the government likes it or not, but
15 according to Mr. Stevens, basically, you can't.

16 Now, but we have another -- we have another course,
17 and that's called the court, and that's called justice, and
18 now for Mr. Stevens to stand up and say, "And now he's here,
19 having his trial," how dare him say that? He's entitled to a
20 trial. He's entitled to his rights to be heard by you, by a
21 jury, and to say that he's causing all this is trying to take
22 away this man's constitutional rights to have justice in front
23 of you. You are the justice, ladies and gentlemen of this
24 Jury, and how dare the government go that far, but that's not
25 the only thing they did.

1 They went to ensnare this man into -- into something.
2 They tried to entrap him. They tried to entrap him. You
3 heard Mr. -- he's an eloquent speaker, and I'm not going to --
4 I like him, but the bottom line is you can't do unlawful
5 things whether or not you're wearing a suit of the government
6 or you're wearing a suit of somebody who is charged with a
7 crime. You cannot do unlawful things to do that, and that's
8 what -- exactly what you heard from Special Agent Zayas say.
9 Now, who approached whom? The question -- that's a question.
10 Now, when -- when Mr. Washington came to that meeting, Mr. --
11 I mean Mr. Warren came to that meeting, Zayas jumped out on
12 him like he was a piece of meat, like a meal. "Man, I got
13 this, I got that," and he used all kind of profane words that
14 I won't even belittle, I won't even darken this court with
15 anymore, but he used all kind of curse words and just
16 meaningful -- I can't even say the word -- just bad words just
17 to express himself, saying this is how people act. Well, how
18 dare you on that, Mr. Zayas. You know, what people are you
19 talking about? People down on their luck? Impoverished
20 people? Minority people? What people are you talking about?

21 MR. STEVENS: Your Honor, I'm going to object to that
22 characterization. I don't think it's consistent, and I think
23 it's -- it's inflammatory.

24 THE COURT: All right. I -- I -- I'll sustain that.

25 MR. JIMERSON: What people are you talking about?

1 Okay. Now, down on your luck, I don't know. "Those kind of
2 people," he said that. You can infer what you want to infer.
3 He said "those kind of people." I don't know what that means,
4 but I'll tell you it doesn't mean the right thing, but he went
5 on and he jumped all on this man, and he kept saying, "I'm
6 going to do this. I got this cartel," which is a lie. "We
7 got this Mexican cartel. We have this amount of dope, this
8 amount of cocaine." Lie.

9 Now, let's stop there. What amounts were they
10 talking about? What amounts have been proven in this case?
11 You have a burden -- I mean you have the judgment of the facts
12 right here. What facts do we have to show the amount of
13 cocaine? Nothing. It jumped from this amount to a huge
14 amount to stamps amount to whatever, and Mr. Zayas said, "I
15 did that because I wanted to increase the level, increase the
16 level, increase the type of people I could get involved with
17 this." How dare you? When you're telling a lie, you don't --
18 what factual basis do we have that, basically, the certainties
19 of what was going to go on, it existed, other than the fact
20 I'm nodding my head, other than the fact I'm going with
21 someone to meet you, okay, other than the fact -- where are
22 you going to meet at? What house are you going to go to? We
23 didn't ask for an address particularly. Well, what house you
24 going to go to? How much cocaine? What's there? What's
25 behind there? Nothing.

1 We have no certainties in this matter, and yet Zayas,
2 again, like I expressed, like hopped all on this man because
3 he, all of a sudden, decided to change his focus, and I find
4 that interesting as well because now you're here from DC to
5 help the city out with drug situations; all of a sudden,
6 you're here now and you're going to change your focus? No.
7 He wanted to entrap someone, and he wanted to entrap someone
8 because he wanted to entrap them because he knew there were
9 certain people he didn't want, he didn't want around.

10 He knew that -- well, you heard -- that Mr. Warren
11 had convictions for, you know, and the charges that the Judge
12 read out to you, you heard that, and you also heard that you
13 can't consider that other than the person had the propensity
14 to do something similar to that, and we'll get into that
15 whole, but my question is what -- why are you trying to go
16 after certain people when they're just trying to do nothing,
17 yet other than -- other than this man has done his time and
18 his service that's due on these charges. He was doing okay.
19 When people do -- when people have paid their price, they're
20 doing okay, why drag somebody else in there? That's what he
21 did. That's what he did. And I think that's unlawful.

22 Now, the instruction says -- and I'll change screens
23 on you for a second. Instruction #17, you can read this.
24 It's a little bit off, but basically, Instruction 17, the
25 Defendant was -- I'll read it. One of the issues with regard

1 to Counts I and II is whether Defendant was entrapped. The
2 Government has the burden of proving beyond a reasonable doubt
3 that the Defendant was not entrapped by showing either, one,
4 the Defendant was -- was -- I'm sorry -- the Defendant was
5 willing to commit the crime of possession of a firearm in
6 furtherance of a drug trafficking crime before he was
7 approached or contacted by law enforcement. Nothing in this
8 record says that he was willing -- he had the -- he was
9 willing to do that. Where are they getting that from?
10 They're trying to drag in his past and say he was willing.
11 Well, this man has done other things. He's -- he's -- he's
12 been okay. He's not been arrested or -- or, you know, charged
13 with anything at that point. Why is he willing to do
14 something? You cannot take it that far. In that case,
15 anybody can be gotten off the street because they don't like
16 the way you look, they don't like the way that your past has
17 been, and they're going to clean it up for a certain whatever.
18 You came here, Officer Zayas, from DC to do a job, and you
19 didn't do your job, and I'm telling you that. What he did was
20 change focus and going after people because he wasn't doing
21 his job on the other side. So now he wants to drag in whole
22 team from DC and all that, whatever. Well, do your job. This
23 man was ensnared. This man was entrapped. This man did not
24 do it. You came to him.

25 Now, Mr. Stevens wanted to argue that, okay, well, he

1 came to Mr. Washington. When Mr. Washington -- when
2 Mr. Warren came to him, again, like I say, it was Zayas who
3 offered him money, offered him half of whatever, give it to my
4 confidential informants. Now, you also heard, while we're
5 there, about how these confidential informants were not even a
6 part of it. Well, then, if you're going to do this job, these
7 confidential -- I called them snitches during the trial. You
8 remember that. You know, paid snitches, they got about \$3,000
9 apiece, and they were out trying to get people to do certain
10 things. If you're not going to do -- you know, if these
11 people were not part of it, then how, Officer Zayas, after
12 this robbery were you going to give these snitches half his
13 drugs to them, so they can take it to wherever he went to?
14 You're a liar. Plain and simple, I said it, you're a liar,
15 and he said it to you in front of you. He said that in front
16 of you, but then it doesn't make sense.

17 Now, the second part, it talks about -- and I'll go
18 here -- is that the government or someone acting, I believe --
19 the government or someone acting for the government did not
20 persuade or talk the Defendant into committing conspiracy to
21 distribute cocaine or possession of a firearm in furtherance
22 of a drug trafficking crime. Okay. Well, I think that's
23 easily met. The government or someone acting for the
24 government did not persuade or talk the Defendant into
25 committing it. Zayas is a Special Agent. He's part of the

1 government. He was there. You heard the tapes. You heard
2 the -- you heard the -- I call them tapes. You heard the CDs,
3 the videos. You saw the video. He was saying that, and then
4 he was saying, "That's how I talk, man. That's how I talk."
5 Well, you know, when you talk like that and you're from -- you
6 know, from certain ways, you're emphatic about it. You're
7 pushing something. You know, when you're saying, "I don't
8 want to be part of it," like Warren -- Mr. Warren said, "I
9 don't want to be part of this," what did he do? "Man, come
10 on. I've got to make this."

11 MR. STEVENS: That's inconsistent with the testimony.

12 THE COURT: I'll -- the Jury will remember the
13 testimony, and you'll have a chance to speak to it.

14 MR. STEVENS: Thank you.

15 MR. JIMERSON: "I have got to -- you know, I've got
16 to make this move. My lady -- I've got to get my lady out.
17 I've got to do this now, now, now. You can't be late. You
18 can't do this. You can't do that."

19 Everything is pushing, pushing, pushing.

20 "I'm not -- I don't feel comfortable about this.
21 I've got bad vibes."

22 "Oh, man, oh, man, are you a cop?"

23 "Hell, no." He said something more profane than
24 that, but he said that, "No, I'm not a cop," and yet he wants
25 to talk about the street lingo, you know, that people use, and

1 I asked, well, if you're talking about, basically, when people
2 are trying to get out, be clear about it, so you don't have to
3 jive your way literally -- you know, the terms -- your way
4 into something. Get out. Say to the people, "You know, hey,
5 you sure you want to do this?"

6 "Are we down? Are we good?" or some other phrase he
7 used, but I suggest to you that was improper, that was
8 entrapment, and we can go on.

9 And the instruction further goes on to say that if
10 you find the Government proved at least one of these things --
11 guess what? They didn't prove anything. They didn't prove
12 any of these things as I just presented to you the facts
13 behind that. So, you know, we just can't stand behind, you
14 know, something saying, "Well, we did because we're the
15 government." You didn't do it, and I just showed you the
16 facts on how they didn't do it. Okay. Mr. Warren did not
17 participate voluntarily in that. He was ensnared into that by
18 this -- by this agent of the government, Mr. Zayas, who told
19 you constantly that he lied. He had heightened the ability,
20 he heightened this up, and then he's trying to get you to
21 admit that there was something -- that something was there,
22 cocaine, five milli -- five kilograms of cocaine. It was
23 never there, never there. No stash house. No cartel.
24 Nothing.

25 I can't speak for Robert Washington. I wish I could,

1 but I can't, you know, but the Government knows Robert
2 Washington had that gun, and he just spoke about it, whether
3 or not, you know, Washington put it in the trunk of the car.
4 He also knows -- you saw the exhibit -- I believe it was 31,
5 32 -- when I was talking to the agent, the custodian of
6 record, I mean the evidence collector, basically, of how that
7 gun was turned around in the passenger's side. It was
8 actually turned around from a person sitting in the
9 passenger's side. Now, I'm the driver, and I -- and I --
10 Mr. Warren, I'll say it to you; you know, basically, you
11 shouldn't have got in that car with people putting guns in
12 your car. You should know better. Okay. You should know
13 better, but he -- he did it anyway, but for -- not for one
14 minute did he possess that gun. He picked it up at -- at
15 Washington's house. I mean at Twitty's house, I believe.

16 MR. STEVENS: Judge, there's no evidence of this.

17 THE COURT: There's no evidence. That's correct.
18 The Jury will remember the evidence, but confine yourself to
19 what is in evidence.

20 MR. JIMERSON: Okay. Thank you, Your Honor. But
21 there is no evidence that Mr. Washington -- that Mr. Warren
22 possessed those guns in terms of there. Okay. Nothing that
23 says that, and the Government knows that, yet they're going to
24 say, well, he put it in his car; therefore, he's liable for it
25 because it's in his car. That's really their position. And

1 it was a dumb move to have guns in your car with your
2 background. I'm saying that to you, and I've said that to
3 him, and he knows it. It was a dumb move, but -- but he
4 didn't possess the guns. Now, if we want to get legal and
5 technical about it, then that's -- that's the Government's job
6 to persuade you, and then you choose what you want to choose,
7 but Mr. Washington basically caused this. He's the one that
8 initiated all these things, okay, and not -- and -- and Zayas
9 took over. He took over and he went after the man. As I said
10 before, he went after him with such a zeal that it caused me
11 to shutter, just sitting up here. How can you be that callous
12 and cold as an agent of the government, trying to ensnare
13 citizens who are doing okay, trying to get them into trouble,
14 so you can get rid of them? When you came here to do a
15 certain job, you're shifting your focus all of a sudden from
16 whom? He chose to. Zayas chose to or Zayas -- I'm sorry --
17 chose to, to change his focus, and he changed his focus
18 because it's an independent thought when you go after people
19 to put things on them. Independent thought. And that is
20 entrapment. I read to you that, and I read to you why I
21 believe that is not -- those two charges are not appropriate
22 because Mr. Warren was in fact entrapped by that.

23 And let's talk about he's coming here to do
24 something, he's a police officer, and once he found out who
25 Mr. Washington -- I mean Mr. Warren was, you're going to tell

1 me he met him on a humbug and he didn't know anything? Give
2 me a break. Give me a break. You're the guy that coordinates
3 SWAT teams from DC. You're the guy that coordinates
4 undercover snitches that get paid \$3,000, you know, from a
5 certain fund to do certain things or drive your cars around or
6 whatever. You're going to tell me he didn't know who this man
7 was? Absolutely not. He knew who this man was. And not for
8 one minute do I believe him, and I'm telling you
9 straightforward I believe he's a liar about that because
10 that's not proper police work, and if he is -- and if he's not
11 lying, he's reckless because you don't do that, and I believe
12 any police officer do their background checks before they get
13 involved in anything. In fact, I believe he did very well.
14 He mikes up everything he does. He's very procedural. He
15 does all that. Okay. So to say he didn't know who this man
16 was is just -- just flat-out unbelievable at this point, and I
17 suggest that you reject that, that you give the benefit of the
18 doubt, the reasonable doubt, to my client, Mr. Warren, on that
19 issue as well, you know, and I think he knew that -- that he
20 was after this man to --

21 MR. STEVENS: Judge, if I could, I'm going to object
22 here. I've let this go for a while. He keeps expressing his
23 own opinion about what he thinks.

24 THE COURT: Yeah, sustained. It's sustained.

25 MR. STEVENS: Thank you.

1 MR. JIMERSON: Zayas acted unlawfully, and he acted
2 unlawfully in respect to my client's rights, and we can -- we
3 can say all we want, but that's the bottom line, and you are
4 the arbiters of that, the final people of that. You can
5 decide whether or not that conduct is right, whether or not
6 that conduct is going to be okay for us, that anybody can say
7 anything to us and because they wear a government hat that,
8 therefore, we are now possible meals for their -- for their
9 grinder. Okay. That's not the society I live in. That's not
10 the government that I vote for, I vote in. That's not the
11 kind of world that I believe that we're teaching our students
12 that this is how the system works. It doesn't work that way,
13 and it works to the benefit of people charged with things with
14 the benefit -- with the -- with the doubt, beyond a reasonable
15 doubt. They get the doubt. They get the doubt, reasonable
16 doubt. They get that, but just to say that because you talked
17 to me and now I've got you and whatever -- now notice the rest
18 of these things. Mr. Warren is trying to withdraw. He's
19 saying, "Okay. I'm not feeling -- I've got vibes. I have bad
20 vibes, or my friend got bad vibes." He's trying to withdraw.
21 He's also saying, "I'm not going, you know, on that trap car.
22 I'm not following. I want to stay here at the laundromat."

23 Oh, but Zayas got all mad with that one. He started
24 pushing again, pushing again.

25 "I want to stay here" simply means "I am not going."

1 "I am not going" means "Get away from me."

2 I've got to leave you alone. That's what it means.

3 No, but no. Zayas pushed more, pushed more, pushed
4 more, pushed more, and I believe that the benefit of the doubt
5 should go to my client on that because there's some point that
6 you've got to let it go. Some point, you have to let it go,
7 not just the Defendant but the government, but the government,
8 and they didn't want that to happen because it looks too good
9 for them with arrests. He said that. I was trying to get
10 arrests. I'm going to tell you a lie because I want arrests.
11 I've got to have -- he said those words. My words to you are,
12 my question to you is, why, why, when no crime has been
13 committed, no house, no stash house, no dope, no quantities of
14 drugs, no cartel, no anything, and I'll go street with you.
15 No nothing there. Why? For one thing, ladies and gentlemen
16 of the Jury. For reasons that are unlawful, and that's why we
17 have the entrapment defense, the entrapment instruction. It's
18 not because he's got you here -- his right to have a trial
19 under our Constitution. It's because he was unlawfully
20 treated by the government. That's why we're here. That's why
21 we're here, and that's why you're here. Right now, right this
22 minute, when you go back there and decide whether that's true.
23 You -- I'm nowhere near as smart as you guys collectively or
24 individually, nowhere, but you can read through these things.
25 You can remember then what you heard of the testimony. You

1 can recall the videos, you can recall the testimony, and you
2 can look at that man when he told you that, the
3 aggressiveness, the zeal of that, okay, how he turned to you
4 and said what he wanted to say to you. You can look at that,
5 and you can determine whether that's sufficient for convicting
6 this man for something that he -- that he created
7 fictitiously.

8 Think about that. We are in trouble when I say that.
9 If that can happen, it can happen to anybody. It can happen
10 to the least of us. It can happen to the most of us, but more
11 importantly, it can happen to people who are trying to go
12 about their business, who are trying to go about their
13 business, and going about their business in this world is
14 everything. Going about your business in this life is
15 everything nowadays. It's always been because all we want to
16 do is just get along, to move along, and this man is trying to
17 get along with his life, and yet you drag him into something
18 that causes him that he have to sit here and have somebody
19 like me try to plea to you that what that liar did was wrong,
20 and it is wrong. I can't think of a worse situation to be in
21 from that standpoint when you're trying to prove a lie --
22 unprove a lie. I think it's impossible, but we have you to
23 balance it, to look at it, and I ask you, please do that. I
24 have every confidence that you will do that.

25 A few more points and I'll sit down. I think I may

1 have said this. "Heighten the interest. Take half the money.
2 Give it to my people" that supposedly didn't have anything to
3 do with it, okay, but you figure that one out. "Take half the
4 money. I've got to move my woman out of here." He said some
5 other bad words about his woman, okay, but he said, "Move
6 my -- I've got to get out of here because such and such and
7 such and such," and he went on and on and on, and, you know, I
8 just feel that, you know, that type of aggression, that type
9 of anxiety, that type of zeal, that type of "I'm going to get
10 you. I've got to get you. I've got to get you. Take this
11 lie. Take this lie. Oh, you won't buy that lie? Well, take
12 this lie. Well, you won't buy that lie? Take this lie." And
13 he lies and he lies and he lies and he lies because,
14 ultimately, basically, the only thing they really had was,
15 basically, somebody standing at a car wash and saying, "Okay,
16 let's do something."

17 Okay. Standing at a car wash. Okay. What's going
18 on?

19 "I'm not going."

20 "Come on, man. Come on, come on, come on." Other
21 words. Okay. "I've got to take you to this trap car. Follow
22 me."

23 "I'm not. I'm staying here."

24 Zayas says, "Well, no, that's still not good enough."

25 That is good enough. How good does good enough have

1 to be when nothing really existed anyway? How great do you
2 have to be, government, when nothing exists anyway? How good
3 is enough? I submit to you when you're lying, no good is
4 enough because no matter what, he's got you. No matter what,
5 the moment you open your mouth, the moment you say
6 something -- and the government knows that -- basically, they
7 can come after you, and that is unlawful, that is improper,
8 and that is, in my opinion, a reason to acquit Mr. Warren,
9 particularly on the issues of the drug house conspiracy, a gun
10 in connection with a conspiracy, and you know and I believe --
11 and I believe, you know, physically, he didn't have those
12 guns. Okay. You know, he didn't have them. I believe that.

13 MR. STEVENS: Judge, I'm going to object.

14 THE COURT: Yeah, sustained.

15 MR. STEVENS: It's irrelevant what he believes.

16 THE COURT: You can't -- you can't -- it's improper
17 to state your own personal beliefs.

18 MR. JIMERSON: I understand. Thank you. Again, I
19 don't want to go too far, but, you know, at least there's the
20 argument that -- you know, that the guns were from someplace
21 else. So, anyway, you call it, but I -- but I do believe and
22 I think it's proper here that my client should be acquitted he
23 on those charges.

24 The third charge, he had the gun. He had it in terms
25 of the car, and you want to look at possession, constructive

1 possession, whatever. I said what I believe how they got
2 there. I said what I said, how whatever, you know, but you
3 call it, but on those other two charges particularly, don't
4 let a liar persuade you. Don't -- don't do it. Don't do it.

5 My client is innocent. Please find him innocent.

6 Thank you.

7 THE COURT: All right. You may proceed.

8 MR. STEVENS: Thank you, Judge. How much time,
9 please?

10 THE CLERK: You have nine minutes and 40 seconds.

11 MR. STEVENS: Thank you.

12 Ladies and gentlemen, I think he just admitted his
13 Defendant had the gun as to Count III but not as to Count II.
14 I don't know how that differs. I mean each one has a knowing
15 possession of a firearm element. I think he just admitted his
16 client had the guns, but in any event, we've proved it beyond
17 a reasonable doubt whether he admitted it or not.

18 Let me show you one of the first instructions the
19 Judge gave you. What was Mr. Jimerson doing up here? I
20 mean -- "Do not allow sympathy or prejudice to influence you.
21 The law demands of you a just verdict, unaffected by anything
22 except the evidence, your common sense, and the law as I give
23 it to you." I mean, what was he trying to do up here? What
24 was he appealing to here? What was he appealing to? Was he
25 appealing to your reason and common sense? You're to decide

1 this case based on those things, and that's what I ask you to
2 do. Follow the instructions, and you'll be fine.

3 I don't know if Mr. Jimerson and I were trying
4 different cases here over the last day or not, but the case he
5 told you about isn't the case that you saw in here. You
6 remember the evidence. I mean, to the extent he talked about
7 the facts of this case at all, he got them all wrong. He
8 talks about -- he talks about the Defendant saying, "I've got
9 bad vibes. I've got bad vibes." Well, he claimed that when
10 Agent Zayas was on the stand. Do you recall that? And then
11 we show Agent Zayas the transcript, and he's talking about
12 these guys that he has out there he claims that have the other
13 guns having bad vibes and not coming in there. He doesn't say
14 he had bad vibes.

15 He talks about that -- he said flat-out, ladies and
16 gentlemen, the Defendant said he didn't want to do this.
17 That's what he told you. Do you remember the evidence?
18 Nowhere anywhere did the Defendant say anything even
19 approaching that. Okay. Agent Zayas -- just the opposite,
20 Agent Zayas testified; I asked him, "Everything you did with
21 this Defendant is on videotape, is that right?

22 Yes.

23 Okay."

24 And I asked him, "Did he ever say he didn't want to
25 do this robbery?

1 No, he did not."

2 Did you ever see any video in which he said, "I don't
3 want to do this robbery"? You didn't because it didn't
4 happen. And think about that. If, in fact, he had said, "I
5 don't want to do this robbery," in the context of everything
6 else, would that make any sense? I mean, he shows up on
7 June 5th, but he didn't say, "I don't want to do this
8 robbery." He did everything he could to make the robbery
9 happen. Those facts that he talked about weren't facts at
10 all. It's just made up. That's not what the evidence was,
11 and you know that. It's kind of like the -- you know, he
12 cross-examined Agent Zayas on when Robert Washington refers to
13 "a lick like this," and Agent Zayas explained that "a lick" is
14 a robbery.

15 "Well, couldn't it be a Tootsie Roll pop?"

16 Were they talking for three days about candy, about
17 suckers, about Tootsie Roll pops? No. They were talking
18 about a robbery, ladies and gentlemen. I mean, I think that
19 tells you everything you need to know about this defense.
20 "Couldn't 'a lick' have been a Tootsie Roll pop?" It's
21 ridiculous, ridiculous.

22 He didn't talk about the facts up here. He talked
23 about all kinds of made-up things. He talks about -- you
24 know, I think he admitted that this guy had the gun, but in
25 any event, he's talking about, well, the way the gun was

1 turned in the trunk, the driver could never have possessed it.
2 Well, it's a silly argument in any event, ladies and
3 gentlemen, but if you're the driver of a car and you're
4 stopped and you want to reach around that way, I mean, you'd
5 have to reach with your left hand whether you're right-handed
6 or not. I mean that occurs to me. In any event, it's a silly
7 argument. We all know that this Defendant possessed those
8 guns in the trunk.

9 He talks about on and on and on Agent Zayas is a
10 liar, he's a liar, he's a dirty liar; he's every other bad
11 name you can talk about. I don't want to meet an undercover
12 agent who isn't willing to tell his cover story to people.
13 How successful is that going to be? And remember the
14 instruction, ladies and gentlemen. On and on and on about
15 lying, Agent Zayas is a liar. The government -- the law
16 allows the government to use undercover agents, deception, and
17 other methods to present a person already willing to commit a
18 crime with the opportunity to commit a crime. He's attacking
19 every undercover operation that's ever been done. Every
20 undercover agent has to tell lies to the people he's dealing
21 with. Agent Zayas told you, "When they asked me -- when
22 Twitty asked, 'Are you the police,'" yeah, he lied to him.
23 He's going to tell this guy that he's the police when he knows
24 that they're ready to go do an armed robbery? He has no idea
25 if these guys have guns on them, let alone in the car. "Yeah,

1 I'm the police. You got me." Are you kidding me? That's
2 what the defense is?

3 Ladies and gentlemen, Daryl Warren was willing to do
4 this from the very beginning. The government didn't seek him
5 out. He suggests that again, as he did in opening, that he
6 was a felon, he had these prior convictions, so the government
7 went looking for him, and he doesn't believe that they didn't
8 know who he was when he first came on the lot. Now, you tell
9 me. When Robert Washington says, "I know a guy who will do
10 this armed invasion robbery, and I'll bring him to meet you,"
11 how are they supposed to determine who he's thinking of? How
12 would they ever know that? Satellites? I mean, are they
13 going to bug his phones at that point? That's not what
14 happened here. I don't care what he believes. Okay. That's
15 not what happened. They're doing this investigation. Robert
16 Washington says he knows these people, and how are they going
17 to determine who the people are? They're going to meet with
18 them, and Agent Zayas puts his life on the line meeting with
19 Robert Washington and two complete unknowns. He gets into
20 that Cadillac on June 3rd and sits in a car with these three
21 individuals so that he can conduct his investigation and get
22 them off the street. These are guys who are going to take an
23 assault rifle in the city of St. Louis and go charging into a
24 house to steal some cocaine. That's who we're dealing with
25 here. I ask you to go back there and convict him on all three

1 counts. Thank you.

2 THE COURT: All right. Members of the Jury, I will
3 now give you the instructions on conducting your
4 deliberations, and so in conducting your deliberations and
5 returning your verdict, there are certain rules you must
6 follow, and I'll list those for you now.

7 First, when you go to the jury room, you must select
8 one of your members as your foreperson. That person will
9 preside over your discussions and speak for you here in court.

10 Second, it is your duty as jurors to discuss this
11 case with one another in the jury room. You should try to
12 reach agreement if you can do so without violence to
13 individual judgment because a verdict, whether guilty or not
14 guilty, must be unanimous. Each of you must make your own
15 conscientious decision but only after you have considered all
16 the evidence, discussed it fully with your fellow jurors, and
17 listened to the views of your fellow jurors. Do not be afraid
18 to change your opinions if the discussion persuades you that
19 you should, but do not come to a decision simply because other
20 jurors think it is right or simply to reach a verdict.

21 Third, if the Defendant is found guilty, the sentence
22 to be imposed is my responsibility. You may not consider
23 punishment in any way in deciding whether the Government has
24 proved its case beyond a reasonable doubt.

25 Fourth, if you need to communicate with me during

1 your deliberations, you may send a note to me through the
2 Court Security Officer who will be posted outside the door,
3 signed by one or more jurors. I will respond as soon as
4 possible, either in writing or orally in open court. Remember
5 that you should not tell anyone, including me, how your votes
6 stand numerically.

7 Fifth, your verdict must be based solely on the
8 evidence and on the law which I have given to you in my
9 instructions. The verdict, whether guilty or not guilty, must
10 be unanimous. Nothing I have said or done is intended to
11 suggest what your verdict should be. That is entirely for you
12 to decide.

13 Now, finally, the verdict form is simply the written
14 notice of the decision you reach in this case, and the form
15 has the caption of the case on it, and then it says "Verdict"
16 and then it reads, "On Count I, we, the Jury, find Defendant
17 Daryl Warren" -- and there's a blank, and you fill in either
18 "not guilty" or "guilty" -- "of the crime charged in Count I
19 of the indictment."

20 "Count II: We, the Jury, find Defendant Daryl
21 Warren" -- and then there's a blank where you fill in "not
22 guilty" or "guilty" -- "of the crime charged in Count II of
23 the indictment."

24 And then "Count III: We, the Jury, find Defendant
25 Daryl Warren" -- and there's, again, a blank -- "of the crime

1 charged in Count III of the indictment."

2 You will take this form with you to the jury room,
3 and when you have agreed on your verdict unanimously, the
4 foreperson will fill in the form and sign and date it and
5 advise the Court Security Officer that you're ready to return
6 to the courtroom.

7 So, at this time, the clerk will escort you to the
8 jury room for your deliberations. In just a moment, we'll
9 send you up a copy of the instructions. If you want to see
10 any of the evidence, you may send a note asking for us to do
11 that, and I will ask Ms. Toney to simply get your things out
12 of -- if you have a coat or anything in the jury room, bring
13 out whatever you have, and then you'll come back out with
14 Ms. Porter.

15 Okay. So the case is submitted to the Jury for its
16 deliberations.

17 (Jury out at 3:40 p.m.)

18 (The following proceedings were held outside the hearing
19 and presence of the Jury.)

20 THE COURT: I will discharge the alternate when she
21 comes back out, and then we'll have the instructions. I did
22 not -- I'll -- whatever you all -- we didn't discuss how to
23 handle the exhibits beforehand, but if you wanted to send in
24 the documentary exhibits, that's fine.

25 MS. BEHRENS: I did have a question --

1 THE COURT: Yeah, go ahead.

2 MS. BEHRENS: -- about the instructions. I just
3 noticed something on one of the instructions, on the 924(c)
4 instruction. The first element talked about conspiracy to
5 possess with intent to distribute, but we didn't have that in
6 excess of five grams. I don't know whether we need to.

7 THE COURT: I don't think you need to. I think
8 it's --

9 MS. BEHRENS: Okay.

10 THE COURT: I think it's okay the way it is. So hold
11 on because I do want -- don't leave. I want you to make sure
12 the exhibits are all together and only the exhibits that were
13 received in evidence are there and they're all together in
14 case they ask for them.

15 Ms. Toney, I want to thank you very much for your
16 service in this case. I always think it's hard to be the
17 alternate because you have to sit here and listen to all the
18 evidence and then not get to talk to the other jurors, and I
19 really do appreciate your service. I am discharging you at
20 this time, but I am asking that you not discuss the case with
21 anyone until you know there has been a verdict rendered, and
22 if you want to, you can get a phone number from one of the
23 clerks to call, so that they'll tell you, yes, there was a
24 verdict or not, and -- but please -- so please don't discuss
25 it. You can leave, but don't talk about it this afternoon

1 and -- you know, because we want to wait until there is a
2 verdict received, but thank you very much. If it weren't for
3 people like you willing to serve, we really couldn't have a
4 system of justice like this, so we appreciate it.

5 JUROR #13: Thank you.

6 THE COURT: Thank you. All right. I will be right
7 back with the instructions cleaned up to give to the -- to
8 send in to the jury room along with the verdict form, although
9 that's all we're going to do. So if you all want to take
10 the -- once the alternate leaves, if you want to do that, you
11 can.

12 (Court recessed from 3:42 p.m. until 3:44 p.m.)

13 THE COURT: Counsel, I'll hand you each a corrected
14 copy of page 14 of the instructions, which is the one where I
15 left that little phrase in.

16 MR. JIMERSON: I'm fine with it. I'm fine with it,
17 Your Honor.

18 THE COURT: Yeah, and so I've corrected that, and
19 we'll send that in with the verdict form --

20 MR. JIMERSON: Yes, ma'am.

21 THE COURT: -- to the -- to the jury room.

22 MR. STEVENS: Thank you, Judge.

23 THE COURT: And then, again, hang around so that
24 Brittany knows where to find you.

25 (Court recessed from 3:45 p.m. until 3:47 p.m.)

1 THE COURT: We're back on the record now, and I've
2 just discussed with counsel exhibits, and I think there's
3 agreement that if the Jury asks to see exhibits we will
4 automatically send in the documentary exhibits that have been
5 received in evidence, which is the photographs and the pieces
6 of paper. We will not send in the videos or any of the
7 physical evidence, so the guns, ammunition, glove, knife, none
8 of that stuff will go in. Just the documentary evidence.
9 Okay.

10 MR. JIMERSON: Yes, ma'am.

11 THE COURT: And that's agreeable to both sides?

12 MR. STEVENS: Yes, Judge.

13 MR. JIMERSON: Yes, Your Honor.

14 THE COURT: All right. Thank you. Now we're off the
15 record.

16 (Court recessed from 3:48 p.m. until 3:49 p.m.)

17 THE COURT: Off the record first.

18 (Off record discussion.)

19 THE COURT: We just received a note from the Jury,
20 and it says, "1." -- as if there was going to be a list -- "3
21 min CD with know caption" -- K-N-O-W -- "Can we have a
22 transcript of what was said during video," and it's not
23 signed, and I don't know which video they're referring to, and
24 I also have a question what you think we should do with regard
25 to the transcript versus replaying the video. So what's the

1 Government's position on how we should respond? Do you all
2 think you know what three-minute video they're talking about?

3 MR. STEVENS: Yeah, it's -- they're referring to the
4 one with no caption. The only one would be the three minutes
5 that Mr. Jimerson -- the disc that he asked us to play.

6 MR. JIMERSON: What did the note say? It said,
7 "3" --

8 THE COURT: Yeah, here, come look at it. It says "3
9 min" video with no caption.

10 MR. JIMERSON: Oh, three-minute video. Okay. Okay.

11 THE COURT: All right. So as I understand it, that's
12 the only video that didn't have the transcript scrolling
13 across the screen.

14 MS. BEHRENS: Correct.

15 THE COURT: And do you all have a transcript of it?

16 MR. JIMERSON: I don't.

17 MR. STEVENS: No.

18 THE COURT: Okay. So there is no transcript?

19 MR. STEVENS: Right.

20 THE COURT: So we can bring them back in and play it
21 to them --

22 MR. STEVENS: Yes.

23 THE COURT: -- if that's what they want?

24 MR. STEVENS: Sure.

25 THE COURT: So I am going to write on here, "There is

1 no transcript of that video. If you wish to have it replayed,
2 let me know, and you can come back in the courtroom."

3 MR. STEVENS: That's fine.

4 MR. JIMERSON: Mr. Warren doesn't need to be back for
5 that, does he, Your Honor?

6 THE COURT: Not unless you want him to be.

7 MR. JIMERSON: No.

8 (Off record discussion.)

9 THE COURT: Okay. Back on the record, here's what my
10 note says. "There is no transcript of that video. If you
11 wish for the video to be played back to you, please write a
12 note to that effect," and I've signed it "Judge Perry" and
13 dated it and put the time as 3:53 p.m. Okay. That's what the
14 response will be.

15 (Court recessed from 3:52 p.m. until 3:56 p.m.)

16 THE COURT: So on the record now. So we have
17 received -- they did respond to the note by writing on the
18 bottom of the same note, "Please play back video," and it is
19 signed by one of the jurors whose handwriting I can't exactly
20 read, but I'll try to figure it out, but in the meantime --
21 hold on a second. Yeah, I think it's signed by Juror #3,
22 right there in the middle, front row. Anyhow, so if -- as
23 soon as you're ready to play the video, we will be -- we'll
24 bring them back in. All we'll do is I will say, "This is the
25 portion of the video that you asked to see." We'll play it,

1 and then I'll say, "You should go back to your deliberation
2 room." Before I do that, I want to verify, Mr. Jimerson, what
3 you told me off the record. You do agree that it's okay to do
4 this without your client being present?

5 MR. JIMERSON: Yes, Your Honor, I do agree.

6 THE COURT: Okay. That's fine.

7 (Off record discussion.)

8 THE COURT: Okay. Are we agreed that there's a clip
9 up there? Is that the one we think it is?

10 MR. JIMERSON: It should be if that's the
11 three-minute one that they're talking about, Your Honor.
12 That's -- although I don't -- yeah.

13 MR. STEVENS: Okay. I think we're ready.

14 THE COURT: Okay. All right. We'll bring the Jury
15 in and play this clip.

16 THE CLERK: Judge, should they bring their notebooks?

17 THE COURT: They can if they want to.

18 (The following proceedings were held within the hearing
19 and presence of the Jury.)

20 THE COURT: All right. Members of the Jury, we will
21 now play the portion of the video clip that you requested. As
22 I mentioned in the note, there's no transcript with this
23 video, but this is the video.

24 (Video played.)

25 THE COURT: All right. I'll ask the Jury to return

1 to the deliberation room at this time.

2 (The following proceedings were held outside the hearing
3 and presence of the Jury.)

4 THE COURT: Okay. We're in recess again.

5 MS. BEHRENS: Judge, I do have one question for you
6 about the exhibits. You just mentioned not to send back any
7 CDs, and with Government's Exhibit 30 --

8 THE COURT: Do you want this on the record?

9 MS. BEHRENS: No, it doesn't need to be.

10 COURT REPORTER: Oh, I'm sorry.

11 THE COURT: It's okay. Yeah, it doesn't.

12 MS. BEHRENS: It doesn't need to be. I just want to
13 get a preference.

14 THE COURT: Okay.

15 (Court recessed from 4:03 p.m. until 4:52 p.m.)

16 THE COURT: So we have a note from the Jury, and it
17 says, "June 5th? Car wash transcript where Warren indicated
18 he was going in the stash house," and it's signed by the same
19 juror and dated 3-5-14, and so what the lawyers have
20 proposed -- we have a transcript that's of all the clips, all
21 the June 5th clips that were played. There is a point on one
22 of them where he says, "I'm going in," and the lawyers agree
23 that we can just send the transcripts of all of the June 5th
24 excerpts in, is that correct, Mr. Stevens?

25 MR. STEVENS: Yes, Your Honor.

1 THE COURT: And, Mr. Jimerson, that's okay with you?

2 MR. JIMERSON: Yes, Your Honor.

3 THE COURT: And you both agree that even though we've
4 instructed them and that we all know that the actual evidence
5 is the video, that everyone is agreeing it's appropriate to
6 send in the transcripts instead of making them come back out
7 here and listen to the video?

8 MR. JIMERSON: I agree.

9 MR. STEVENS: Yes, Your Honor.

10 THE COURT: Okay. That's what we'll do. Just take
11 it and hand it to them. Put a clip on it, so they can keep
12 the pages in order.

13 (Court recessed from 4:53 p.m. until 5:32 p.m.)

14 (The following proceedings were held outside the hearing
15 and presence of the Jury.)

16 THE COURT: All right. We have been informed by the
17 Jury that they have reached a verdict, so I will order the
18 Jury brought in at this time.

19 (The following proceedings were held within the hearing
20 and presence of the Jury.)

21 THE COURT: All right. Who is the foreperson?

22 JUROR #3: I am.

23 THE COURT: Okay. Ms. Roberts, I understand the
24 clerk -- you've informed the clerk that you have a verdict?

25 JUROR #3: Yes.

1 THE COURT: And you've provided her with the verdict
2 form?

3 JUROR #3: Yes.

4 THE COURT: All right. She'll provide it to me at
5 this time.

6 All right. The verdict is in the proper format, and
7 so I will ask the clerk to publish it at this time by reading
8 it aloud.

9 THE CLERK: "Verdict.

10 Count I: We, the Jury, find Defendant Daryl Warren
11 guilty of the crime charged in Count I of the indictment.

12 Count II: We, the Jury, find Defendant Daryl Warren
13 guilty of the crime charged in Count II of the indictment.

14 And Count III: We, the Jury, find Defendant Daryl
15 Warren guilty of the crime charged in Count III of the
16 indictment."

17 And it's signed by the foreperson and dated this
18 date.

19 THE COURT: All right. Madam Foreperson, is this
20 the -- is this the Jury's verdict?

21 JUROR #3: Yes.

22 THE COURT: All right. Does either -- do you wish to
23 have the Jury polled?

24 MR. JIMERSON: Yes, Your Honor.

25 THE COURT: All right. So here's what we're going to

1 do. We're going to ask each one of you if these are your true
2 and correct verdicts. The clerk will do that by calling your
3 juror number. So you're #1 here on the front row, and the
4 foreperson is #3, and then it goes up to 6 and then 11. So
5 she will -- as she -- as she calls your number, please answer
6 the question she asks.

7 THE CLERK: Juror #1, is this your true and correct
8 verdict?

9 JUROR #1: It is correct.

10 THE CLERK: Juror #2, is this your true and correct
11 verdict?

12 JUROR #2: Yes.

13 THE CLERK: Juror #3, is this your true and correct
14 verdict?

15 JUROR #3: Yes.

16 THE CLERK: Juror #4, is this your true and correct
17 verdict?

18 JUROR #4: Yes.

19 THE CLERK: Juror #5, is this your true and correct
20 verdict?

21 JUROR #5: Yes.

22 THE CLERK: Juror #6, is this your true and correct
23 verdict?

24 JUROR #6: Yes.

25 THE CLERK: Juror #7, is this your true and correct

1 verdict?

2 JUROR #7: Yes.

3 THE CLERK: Juror #8, is this your true and correct
4 verdict?

5 JUROR #8: Yes.

6 THE CLERK: Juror #9, is this your true and correct
7 verdict?

8 JUROR #9: Yes.

9 THE CLERK: Juror #10, is this your true and correct
10 verdict?

11 JUROR #10: Yes.

12 THE CLERK: Juror #11, is this your true and correct
13 verdict?

14 JUROR #11: Yes.

15 THE CLERK: Juror #12, is this your true and correct
16 verdict?

17 JUROR #12: Yes.

18 THE CLERK: It's unanimous.

19 THE COURT: All right. As the verdict is unanimous,
20 I will accept it and judgment will be entered in accordance
21 with your verdict. I now want to tell you all as jurors that
22 you will be released from this case at this time, and I want
23 to thank you for your jury service. It's important you
24 understand I'm thanking you for your service, not for your
25 verdict. I would say this no matter what your verdict was.

1 Throughout the trial, I have told you you can't discuss the
2 case with anyone, and I wanted you to know you're no longer
3 bound by that instruction. You are free to discuss this case
4 or not discuss it as you see fit. We have a local rule in our
5 court that prohibits the parties or the lawyers or anyone
6 associated with the parties or lawyers from attempting to
7 contact jurors in any way to ask you about the -- about your
8 deliberations or ask you anything else about the case, and we
9 enforce that rule. However, that's no limit on your First
10 Amendment rights to talk to anybody you want to. You're free
11 to discuss the case if you want, but you also don't ever have
12 to unless I should tell you, and although I do have that power
13 technically, I've exercised it once in 23 years, so it's
14 pretty rare. So that is -- I will thank you for your service,
15 and I -- if you wish to -- you know, I'd be glad to step into
16 the jury room and thank you personally after we finish some
17 things we have here, but it will be another five or so minutes
18 or 10, so if you want to go home, I certainly understand that.
19 You can just take off, but I'll just check in there. If
20 anyone's left, I will come in and speak to you. I do -- but,
21 again, thank you very much on behalf of the system of justice
22 for serving on the Jury as you have, and you are excused at
23 this time.

24 (The following proceedings were held outside the hearing
25 and presence of the Jury.)

1 THE COURT: All right. I will set the sentencing in
2 this case for Wednesday, May the 28th, at 2:00 p.m. The
3 objections to the Presentence Report will be due on or before
4 May the 7th. So sentencing, Wednesday, May 28th, at 2:00 p.m.
5 Anything else at this time?

6 MR. JIMERSON: Yes, Your Honor. I'd like to request
7 just an additional 10 days to prepare my motion for a new
8 trial, Judge.

9 THE COURT: Okay. So 10 days from now?

10 MR. JIMERSON: Yes, ma'am, additional.

11 THE COURT: Okay.

12 MR. JIMERSON: Well, I think it's due 10 days, but an
13 additional 10 days.

14 THE COURT: An additional 10 days?

15 MR. JIMERSON: Yes, ma'am.

16 THE COURT: Okay. That's fine. You'll have 10 days
17 in addition to whatever the rule requires to file a motion for
18 a new trial.

19 MR. JIMERSON: Yes, ma'am. Thank you, Your Honor.

20 THE COURT: Okay. That's granted. All right. Then
21 the Defendant -- oh, please don't leave until the clerk has
22 worked out anything she needs to with exhibits with you,
23 et cetera, and the Defendant then is remanded to the custody
24 of the Marshals pending sentencing.

25 (Proceedings concluded at 5:39 p.m.)

CERTIFICATE

I, Gayle D. Madden, Registered Diplomate Reporter and Certified Realtime Reporter, hereby certify that I am a duly appointed Official Court Reporter of the United States District Court for the Eastern District of Missouri.

I further certify that the foregoing is a true and accurate transcript of the proceedings held in the above-entitled case and that said transcript is a true and correct transcription of my stenographic notes.

I further certify that this transcript contains pages 1 through 194 inclusive.

Dated at St. Louis, Missouri, this 3rd day of August, 2014.

/s/ Gayle D. Madden

GAYLE D. MADDEN, CSR, RDR, CRR

Official Court Reporter